THE

PRACTICE

OF THE

New County Courts,

WITH FORMS,

AND AN APPENDIX, CONTAINING

The Statute and the Rules,

WITH

A FULL AND ELABORATE INDEX.

BY

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BARRISTER-AT-LAW.

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ADVERTISEMENT

TO THE SECOND EDITION.

THE first Edition of this little work has been sold in three weeks; and I am called upon for a second edition much sooner than I had any reason to expect. It has happened fortunately, however, that the additions I intended to make to the work,—and they are neither few nor unimportant,—were determined upon and digested by me, immediately after the publication of the former edition. In the first place, I have added to this edition a number of new forms, in cases where forms had not been given in the Schedule to the Rules framed by the Judges; so that the reader will now find here a form in every case where by possibility it can be required. I have also given shortly the law of evidence,—the manner of proving public and private documents,—in what cases and how secondary evidence may be given,—notice to produce, in what cases and how, &c.—I have treated of the competency of witnesses,—the mode of examining and cross-examining them,—stating the rules of law upon the

subject;—but the most material addition I have made, is, a statement of the evidence necessary to maintain the different actions of which the new County Courts have jurisdiction, and of the different defences which may be set up to them. I have also added practical observations where I thought them necessary. A list of the Districts, within which these new County Courts are holden, comprising all the parishes, &c. within each district, is also added; and to render the work complete, and that the reader may see at once in what district he may enter his plaint and obtain a summons, my Publishers have added a Map, in which the different districts are delineated.

The reader, therefore, will find that considerable pains have been taken in preparing this edition for the press, notwithstanding the very short notice I have had of its being required.

J. F. A.

TEMPLE,

June, 1847.

PREFACE

TO THE FIRST EDITION.

At the request of my Publishers, I have written this little work on the Practice of the New Local Courts. The subject is not wholly new to me. In 1841, the late Sir Wm. Follett, upon his re-appointment to the office of Solicitor-General, requested me to draw a bill for the establishment of Local Courts for the recovery of debts, and for other causes of action. I drew two:—one, as to debts to the extent of 5*l.*; the other, as to debts between 5*l.* and 20*l.*, and in all other causes of action, with some exceptions, where the damages laid did not exceed 20*l.*

The first of these bills did not establish any new courts, but merely gave to those Local Courts already established, namely, the County Courts and the several Courts of Requests throughout England and Wales, one uniform mode of proceeding, and a certain jurisdiction. It gave to the County Courts jurisdiction in matters of debt to the extent of 5*l.* without writ; and to the other courts, jurisdiction in matters of debt alone, to the same extent. It simplified very much the practice in all these courts, making it as nearly as possible the same as that of the County Court of Middlesex, which I then considered a model for all civil courts of sum-

mary jurisdiction. All the necessary forms, schedules of costs, fees, &c., were also given.

By the second of these bills, it was intended to establish a new court, to be called "The Court of Pleas," to be holden at Westminster, but to have jurisdiction in all parts of England and Wales, in matters of debt above 5*l.* and not exceeding 20*l.*, in all other actions, not brought to try a right, where the damages laid should not exceed 20*l.*,—in all actions by mortgagee against mortgagor, to any extent,—and in actions in the nature of ejectment, between landlord and tenant upon the determination of the tenancy, but not in cases of forfeiture. It was proposed that six judges should be appointed to this court, one for each of the six circuits into which England and Wales were for this purpose to be divided. Clerks of the court were to be appointed in all the considerable towns in England and Wales,—to issue writs, receive the pleadings, make rules in all interlocutory matters, and make up the records, so as to have them ready for trial, when one of the judges should arrive there upon his circuit. A system of pleading and practice, plain, simple, and of trifling expense, was established for these courts; and all necessary forms, schedules of fees, costs, &c. were given. The judges were to go their respective circuits four times in every year, and try all the causes then ready for trial; and if any point of law should arise, of such consequence that the

judge should not like to decide it without consulting the other members of the court, he might reserve it for the opinion of the court when they should next sit in banc at Westminster after the circuit, and the matter would then be decided, without argument, and a rule drawn up accordingly and transmitted to the clerk of the court where the cause had been tried. This was the system I had planned; and I think it would have worked well. None of the inferior courts being abolished, there could be no claims for compensation; and the fees payable in the Court of Pleas would have been sufficient to pay all the expenses of that court, and the salaries of the judges and officers. The costs in the Court of Pleas were moderate, not exceeding the sum of 6*l.*, but still sufficient to insure to parties the assistance of respectable professional men. Uniformity of practice and decision was amply provided for. The jurisdiction of the courts was defined with great certainty,—a circumstance of vast importance in the establishment of inferior courts, it being an established rule of our common law, that, although nothing shall be intended to be out of the jurisdiction of a superior court, but that which specially appears to be so, yet, on the other hand, nothing shall be intended to be within the jurisdiction of an inferior court, but that of which jurisdiction is expressly given to it; nothing can be implied upon the subject. The pleadings were simple; the practice was simple; and the cases would have been tried as

well and as satisfactorily, probably, as if they were tried in one of the superior courts at Westminster. This second bill, however, did not seemingly meet with the approbation of Government, the system being probably deemed too elaborate for the trial of trifling causes of action; and it was considered more advisable to apply the first of these bills, and the summary mode of proceeding established by it, with the necessary alterations, to all cases under 20*l.* The second bill was accordingly returned to me, and the first kept. That this summary mode of proceeding has been adopted on mature consideration, and from a conviction that it will be sufficient for the purpose, I have no doubt whatever. And I sincerely hope and trust it will be found to answer the expectations entertained of it.

In this little work, the jurisdiction of these County Courts will be found to be defined in a manner so simple and perspicuous, as to preclude all doubt or difficulty upon the subject. The practice is plainly and intelligibly stated. And the title "Execution" is stated at considerable length, and the whole of the law upon the subject stated in detail, so that the bailiffs of these courts may see at once what they may legally do, and what they may not, and defendants and others whose goods shall be taken in execution, may see at once whether the acts of the bailiff are legal or otherwise.

As to the manner in which the work is executed, I claim very little merit from it. In writing the

Practice of Courts so recently established, little more can be done than arranging the materials,—the different provisions of the statute, the rules, and the forms,—in such a plain, simple and lucid order, that any portion of the practice, required to be known, may be found at once and without difficulty. If I have effected this, it is all that I intended, and all the reader can fairly expect under the circumstances.

J. F. ARCHBOLD.

Temple, 1847.

TABLE OF CONTENTS.

INTRODUCTION.

SECT. I. *The courts and their jurisdiction*, 1:—The courts, 1; rules of practice, 2;—court houses, 2. The jurisdiction of these courts, 2; in what actions, 2; action, in what district, 4; concurrent jurisdiction, 5; matters in equity, 6.

II. *The judges*, 6:—Their appointment, 6; duties, 7; salary, 8; deputies, 8; in what cases they may punish for contempt, 9.

III. *The officers of the court*, 9:—The clerk, 9; appointment, 9; duties, 10; deputy, 10; fees, 11; security, 11. The high bailiff, 12; appointment, 12; duties, 12; liabilities, 13; fees, 13; security, 14. The treasurer, 14; appointment, 14; salary, 14; security, 15. Officers of the court generally, 15; how protected, 15; actions against them, 15; how punished for misconduct, 15; not to act as attornies of the court, 16.

IV. *Counsel and attornies*, 16:—In what cases, 16; fees allowed, 17.

V. *The accounts, and how and by whom audited*, 17:—Of the clerk, 17; of the treasurer, 18.

VI. *The general fund*, 18.

THE PRACTICE OF THE NEW COUNTY COURTS.

CHAPTER I.

Proceedings in Ordinary Cases.

SECT. I. *The plaint*, 21:—how and by whom entered, 21; particulars of demand, 22, and *form*, 22; note of plaint given to plaintiff, 22; *form*, 28.

II. *The summons*, 23:—when to issue, 23; where, 28; to be dated, sealed, &c., 28; *form*, 23; in the

different actions, 25,—in assumpsit, 25; in actions on bills of exchange and promissory notes, 25;—in debt on simple contract, 26; in debt on bond, 26; in debt on deed, 26;—in covenant, 26;—in detinue, 26; in trespass to land, 27; in trespass to personal property, 27; in trespass to the person, 27;—in case for a nuisance, 27; in case for negligence, &c., 27; in case for deceit, 28;—in trover, 28;—in replevin, 28.

When and how served, 29; *affidavit of service*, 31. How returned, 31.

III. *The defence*, 32: notice thereof, in what cases, 32; *notice of set off*, 33; defence of infancy, coverture, statute of limitations, bankruptcy, or insolvency, 34, *and notice thereof*, 34, 35;—payment of money into court, 35, and *notice thereof*, 36;—*notice of acceptance of the money paid in*, 37;—nonjoinder, 37.

IV. *Evidence generally, witnesses, &c.* 37.

1. Documentary evidence, 37: proof of documents, 37; copies, 39.

2. Secondary evidence, 39: in what cases, 39.

3. Notice to produce, 40: in what cases, 40; form of it, 41; proof of it, 41.

4. Witnesses, their competency, 42: incompetency from want of discretion, 42; from want of religion, 43; not from infamy or interest, 43.

5. Attendance of witnesses, 44: summons, 44; penalty for disobeying it, 45; allowance to witnesses, 46.

6. Examination and cross-examination of witnesses, 46: examination upon the *voire dire*, 46; examination in chief, 47; cross-examination, 51; re-examination, 54.

V. *Evidence for the plaintiff and defendant in the different actions*, 55.

1. Assumpsit, 56: evidence for the plaintiff, 57; defence, 58.

2. Actions upon bills of exchange or promissory notes, 58: evidence for the plaintiff, 58; defence, 60.

3. Action of debt upon simple contract, 61; for goods sold and delivered, 61: for goods bargained and sold, 62; for work and labour, 62; for money lent, 63; for money paid, 63; for money had and received, 63; upon an account stated, 64; for interest, 64; for work and labour as an attorney, 65; for medicines by an apothecary, 65; for use and occupation, 65; in other cases, 66.

Evidence for the plaintiff, &c.—continued.

4. Action of debt on bond 66; or other deed, 67.

5. Action of covenant, 67.

6. Action of detinue, 68.

7. Action of trespass, 68: trespass to land, 68; trespass to personal property, 69; trespass to the person, 69.

8. Action on the case, 70.

9. Action of trover, 71.

VI. *The hearing*, 72:—before whom, 72. Jury, in what cases, 72; *demand of a jury*, 73; *clerk's notice thereof*, 73; *summons to jurors*, 74; manner of hearing, 74; *consent by defendant to judgment upon terms*, 75;—how, if the plaintiff do not appear, 75, *order to pay defendant's costs*, 75; —how if the defendant do not appear, 76, *order to set aside judgment*, 76. Arbitration, 76; *order of reference*, 77. Time given, or adjournment, 77, *order for time*, 78, *or for adjournment*, 78. Judgment, 78: *order upon a judgment for plaintiff*, 79, *the like, where there is an apportionment of costs*, 79, *the like, where the amount is payable by instalments*, 80, *order upon a judgment for the defendant*, 81. Cross judgments, 82. Costs, 82; allowance to witnesses, 83. New trial, 83; *form of the order*, 84; *notice of application for it*, 84, *bond thereupon as security*, 84. Setting aside or staying proceedings, 83; *form of the order*, 85.

VII. *Execution*, 85:

1. Execution within the district, 85: in what cases, 85; in what cases suspended or stayed, 86, *form of the order for suspending or staying it*, 86; for what amount, 87; when and how issued, 87, *and form of it at the suit of plaintiff*, 88, *form of it at the suit of a defendant*, 89. Within what time to be executed, 90; how executed, 90; what goods, &c., may be taken, 91; fixtures, 92; whose goods, 93; goods of a bankrupt, 94; goods of an insolvent, 96; goods of partners, 96; goods assigned by bill of sale, 96. Rescue of goods taken, 97. Goods how sold, 98. Rent deducted, 98. Warrant returned, and money paid into court, 100.

2. Execution out of the district, 100:—how and by whom, 100; warrant returned, and money paid into court, 101.

Execution—continued.

3. Interpleader, 101:—summons, how and in what cases, 101, *form of summons to the plaintiff*, 102, *to the claimant*, 102; how served, 103. Particulars of claim, *and form of them*, 103. Adjudication, 103, *and order*, 103.

VIII. *Commitment for fraud*, 104: summons after judgment, 104, *and form of it*, 104; how served, 105; appearance and examination, 105; examination of witnesses, 105; proceeding in default of appearance, 105; *order for commitment*, 106; *and warrant*, 109; in what cases committal, 106; *order for commitment*, 107, *and warrant*, 110; the like examination and committal at the trial, 108; *order for commitment*, 108, *and warrant*, 111; warrant of commitment, 109; how executed, 109; how executed out of the district, 112. Costs, 113. Return, 113. On payment of debt, &c., defendant discharged, 113. *form of certificate of payment*, 113. Imprisonment not a satisfaction of the debt, 114. The judge may rescind or alter his original order, 114.

IX. *Records*, 114.

X. *Removal of cause; writ of error*, 115: Removal of cause, 115; *form of bond required*, 115. Writ of error, 116.

Chapter II.

Actions by and against Executors or Administrators.

In what cases, 116; upon a judgment for or against testator, &c., 116; in actions by or against the executor, &c., 116, and costs, 116; *warrant of execution against an executor or administrator*, 117; judgment where *plene administravit* is pleaded, 118; judgment *quando*, &c., how enforced, 119. Proceedings on a devastavit, 119:—*form of the summons*, 119; hearing and judgment, 119, *and form of the judgment against the executor, &c.*, 120, *and of the warrant of execution thereon*, 120.

Chapter III.

Proceedings in Replevin.

In what cases, 122. Plaint, 122. Removal, 123; *and form of bond*, 123, 124. Trial, &c., 124. *Form of judgment for plaintiff*, 124, *of judgment for defendant*, 125.

Chapter IV.

Proceedings to recover Possession of Small Tenements.

In what cases, 125. Plaint and summons, 126; in what district, 126, 127; *form of the summons*, 126; how served, 126. Proceedings thereon, hearing, &c., 127; evidence, 127; judgment and warrant, 129; *form of the judgment*, 129; *and of the warrant to deliver possession*, 130; warrant, how executed, 131; *form of warrant of execution for costs*, 131. Indemnity to judge, officers, &c., 132. Liability of plaintiff, 132. Warrant, in what cases stayed, 133; *and form of the bond required*, 133.

Conclusion.

Proceedings for Penalties under this Statute.

Summons and conviction, 135. Distress thereon, 135. Commitment, 136.

APPENDIX.

1. The statute, p. 145.
2. The rules of court, p. 203.
3. The districts, p. 210.

THE

PRACTICE

OF THE

NEW COUNTY COURTS.

INTRODUCTION.

BEFORE I treat of the Practice of these Local Courts, there are some preliminary matters which it is necessary to notice; and I purpose to do so under the following heads:

Section 1. *The Courts, and their Jurisdiction, &c.*
2. *The Judges.*
3. *The Officers of the Court.*
4. *Counsel and Attornies.*
5. *The Accounts, and how and by whom audited, &c.*
6. *The General Fund.*

SECTION I.

The Courts, and their Jurisdiction, &c.

1. *The Courts.*

The Local Courts established in pursuance of stat. 9 & 10 Vict. c. 95, and appointed to be holden in certain districts throughout nearly the entire of England, are branches of the ancient county court. They are called county courts by the statute (*a*); and the summonses and other documents, issued from these courts, are headed "*In the county court of* ———, *at* ———." They must not, however, be confounded with the ancient county court, as they exercise but a portion of the jurisdiction of that court; and the ancient county court still retains all of its jurisdiction, which has not been transferred to these local courts (*b*). The ancient county court, also, is not a court of record, even whilst holding plea by writ of justicies (*c*); but every court, holden under this Act, is (*d*).

(*a*) 9 & 10 Vict. c. 95, ss. 2, 142.
(*b*) Id. s. 4.
(*c*) 6 Co. Rep. 11 b.
(*d*) 9 & 10 Vict. c. 95, s. 3.

The districts for which these courts respectively are holden, and the towns and places where they are to be holden, have been fully defined and appointed by Her Majesty in Council (*e*); and the same may from time to time be altered, the number of districts may be increased, or two or more of them may be consolidated, if Her Majesty in Council shall think proper (*f*).

Rules of practice.] Five of the judges of the superior courts of common law at Westminster, (including the lord chief justice of the court of Queen's Bench, the lord chief justice of the court of Common Pleas, and the lord chief baron of the Exchequer, or one of them), shall have power to make and issue all the general rules for regulating the practice and proceedings of these local courts, and to frame forms for every proceeding they may think nécessary, and also for keeping all books, entries and accounts to be kept by the clerks of the said courts, and from time to time to alter any such rule or form;—and the rules so made, and the forms so framed, shall be observed and used in all the courts holden under this Act; and in any case not expressly provided for herein or by the said rules, the general principles of practice in the superior courts of common law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts (*g*). *See these Rules, in the Appendix, p.* 203; *and the Forms, throughout the body of the work.*

Court houses.] Where a court house and offices, with necessary appurtenances, have not already been provided, or where such court house and offices are inconvenient or insufficient, the treasurer of the court, with the approval of one of the secretaries of state, shall build, purchase, hire or otherwise provide courts and offices, &c., or contract for the use of any county or town hall or other building:—all which shall vest in such treasurer and his successors in office, in trust for the purposes of this Act (*h*). The treasurer is also empowered to borrow money for defraying the expenses (*i*); and the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to any lands, &c. he may purchase (*k*).

2. *The Jurisdiction of these Courts.*

In what actions.] By stat. 9 & 10 Vict. c. 95, s. 58, "all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds, whether on balance of account

(*e*) See Appendix, p. 210.
(*f*) 9 & 10 Vict. c. 95, ss. 2, 5.
(*g*) Stat. s. 78.
(*h*) Stat. ss. 48, 53.
(*i*) Id. s. 51.
(*k*) Id. s. 50.

or otherwise, may be holden in the county court [that is to say, these local courts] without writ;" but the court shall not have cognizance—

1. Of ejectment.
2. Of actions in which the title to any corporeal or incorporeal hereditaments shall be in question.
3. Of actions in which the title to any toll, fair, market or franchise shall be in question.
4. Of actions in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed.
5. Of actions for malicious prosecution.
6. Of actions for libel or slander.
7. Of actions for criminal conversation.
8. Of actions for seduction.
9. Of actions for breach of promise of marriage.

Also a mode of proceeding in these courts, is given by the statute, for the recovery of any house, land or other corporeal hereditament, where the yearly value or rent shall not exceed 50*l.*,—upon the ending or determination of the term or interest of the tenant (*l*). This we shall consider fully hereafter.

The debt or damage, we have seen, must not exceed 20*l.* And by sect. 63, "it shall not be lawful for any plaintiff to divide any cause of action, for the purpose of bringing two or more suits in any of the said courts; but any plaintiff, having cause of action for more than 20*l.*, for which a plaint might be entered under this Act if not for more than 20*l.*, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding 20*l.*; and the judgment of the court upon such plaint, shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly." Where, however, A. became indebted to B. in a sum not exceeding 40*s.* for the carriage of a parcel of goods; and in a month afterwards incurred another debt to B. in the like amount, for the carriage of a second parcel; and B. brought two actions in the county court for these debts respectively: the court of King's Bench held that the causes of action were distinct, and that B. was entitled to sue separately for each demand; and the court accordingly refused a Prohibition (*m*).

The jurisdiction of these courts "shall extend to the recovery of any demand, not exceeding the sum of 20*l.*, which is the whole or part of the unliquidated balance of a partnership account,—or the amount or part of the amount of a distri-

(*l*) Stat. ss. 122—127.

(*m*) *R.* v. *Sheriff of Herefordshire*, 1 B. & Ad. 672.

butive share under an intestacy,—or of any legacy under a will (*n*).

Also, an executor or administrator may "sue or be sued in any court holden under this Act, in like manner as if he were a party in his own right; and judgment and execution shall be such as in the like case would be given or issued in any superior court" (*o*).

So, any person under the age of twenty-one years, may "prosecute any suit in any court holden under this Act, for any sum of money not greater than 20*l.*, which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age." (*p*).

Also, "no privilege, except as hereinafter excepted, shall be allowed to any person, to exempt him from the jurisdiction of any court holden under this Act" (*q*).

And lastly, all proceedings, commenced in the county court of any county, before the time when any court shall be holden under this Act in such county, may be continued, executed and enforced against all persons liable thereunto, in the same manner as if they had been commenced under the authority of this Act (*r*).

But nothing in this Act contained, shall be construed to alter or affect the rights or privileges of the chancellor, masters and scholars of the Universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the courts of the chancellor or vice chancellors of the said universities, as holden under the respective charters of the said universities or otherwise (*s*).

Action, in what district.] By the 60th section of the statute, the summons may issue—

1. In any district, in which the defendant shall dwell or carry on his business, at the time of the action brought.
2. In any district, in which one of the defendants shall dwell or carry on his business, at the time of the action brought. And where there is a joint demand against two or more defendants, and one of them only is served with the summons, the plaintiff may proceed against him alone for the joint debt, and the defendant after satisfying it, may then have his action against the others for contribution (*t*).
3. By leave of the court, in any district in which the defendant, or one of the defendants shall have dwelt or carried on his business at some time within six calendar months next before the time of the action brought.

(*n*) 9 & 10 Vict. c. 95, s. 65.
(*o*) Stat. s. 66.
(*p*) Id. s. 64.
(*q*) Id. s. 67.
(*r*) Stat. s. 4.
(*s*) Id. s. 140.
(*t*) Id. s. 68.

4. By leave of the court, in any district in which the cause of action arose, [although the defendant do not reside or have ever resided or carried on business within the district] (*u*).

Concurrent jurisdiction.] All actions and proceedings, which, before the passing of this Act, might have been brought in any of Her Majesty's superior Courts of Record,—

1. Where the plaintiff dwells more than twenty miles from the defendant, or—
2. Where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, or—
3. Where any officer of these courts shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the court, or the proceeds or value thereof,—

—may be brought and determined in any such superior court, at the election of the party suing or proceeding, as if this Act had not been passed (*v*).

And "if any action shall be commenced after the passing of this Act in any of Her Majesty's superior courts of record, for any cause other than those lastly hereinbefore specified, for which a plaint might have been entered in any court holden under this Act, and a verdict shall be found for the plaintiff for a sum less than 20*l.* if the said action is founded on contract, or less than 5*l.* if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client,—unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such superior court" (*w*).

(*u*) The 3rd section of the statute enacts "that every court to be holden under this Act, shall have all the jurisdiction and power of the county court, for the recovery of debts and demands, *as altered by this Act*, throughout the whole district for which it is holden." The county court, however, had only jurisdiction, where the whole cause of action arose within the county; *Welsh* v. *Troyte*, 2 *H. Bl.* 29. *Eames* v. *Williams*, 1 *D. & R.* 359. *Harwood* v. *Lester*, 3 *B. & P.* 617; and the declaration there, as in all inferior courts, must have stated the whole cause of action,—the consideration as well as the promise, in assumpsit, for instance,—to have arisen within the jurisdiction, *Waddock* v. *Cooper*, 2 *Wils.* 16. *Trevor* v. *Wall*, 1 *T. R.* 151. *Read* v. *Pope*, 1 *Cr. M. & R.* 302, and it must have been proved as laid. Also, the ancient county court had cognizance of all personal actions, and by *justiciers* to any amount. This jurisdiction, so far as respects these local courts, has however been altered by sect. 58 of this statute, as to the particular actions of which these courts may take cognizance, and by sect. 60, as to the district in which the action may be brought. *Vide supra.*

(*v*) Stat. s. 128.

(*w*) Id. s. 129.

These last two sections, it should seem, extend to the courts of the counties palatine, namely, the court of Common Pleas at Lancaster, and the court of Pleas at Durham, as well as to the courts of law at Westminster; but not to the Palace court, or to the courts of record in boroughs within the municipal corporation Act; and that these latter courts, namely, the Palace court and the borough courts, have concurrent jurisdiction with these local courts, or, in other words, their jurisdiction is not affected by this Act.

Also, by sect. 141, "nothing in this Act contained shall be construed to affect the courts of the lord warden or of the vice warden of the stannaries of Cornwall; but this provision shall not be deemed to prevent the establishment of any court under this Act within the said stannaries, or to limit or affect the jurisdiction of any court so established under this Act."

Matters in equity.] "The judges and other officers to be appointed under this Act, shall be authorized and required to perform all such duties in or relating to any cases or matters depending in the high court of chancery, or before any judge thereof, or before the lord chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the lord chancellor shall from time to time, by any general order direct; and for this purpose, and subject to the general rules and orders of the said court, shall have and exercise all such authorities as may be duly exercised by the commissioners or other officers of the said court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorized by this Act to be received are directed to be accounted for and applied: Provided always, that the future amount of such fees shall continue subject to the same authority for revising the same, to which it is now subject" (*x*).

SECTION II.

The Judges.

Appointment.] There shall be a judge for each district (*y*), to be appointed by the lord chancellor (*z*). He shall be either a barrister of seven years standing;—or shall have practised as a barrister and special pleader for at least seven years,—or a barrister or attorney who shall have been appointed to preside in any court constituted under the Acts cited in schedules A. and B. But if an attorney be appointed, who has a partner,

(*x*) Stat. s. 22. (*y*) Id. s. 3. (*z*) Id. s. 9.

he must dissolve the partnership within twelve months; and he must not be town clerk,—clerk of the peace,—clerk to any bench of magistrates,—clerk or secretary to any board of guardians, governors or directors of the poor, or of any vestry or local or parochial board of trustees or commissioners, or of any public company or corporation;—nor shall he be concerned as attorney or agent for any party in any court under this Act, nor, after twelve months, in any other court of law or equity (*a*).

In Bath, Bristol, Liverpool and Manchester, however, those gentlemen who are judges of the present courts of request there, shall be the first judges of the courts to be established there under this Act (*b*). Also, the present county clerk for Middlesex, shall be the first judge of such one of the districts to be formed in that county, as he may select (*c*). Other provisions are also made as to the courts of the manors of Sheffield and Ecclesall, and other manor courts throughout the country (*d*). But in all cases, hereafter, when a vacancy shall occur by death, resignation or removal, the lord chancellor shall appoint the judge, or, where the whole of the district shall be within the duchy of Lancaster, the chancellor of that duchy shall appoint him (*e*). So, the lord chancellor, or the chancellor of the duchy of Lancaster, within their respective jurisdictions, may remove a judge from one district to another, his salary in the latter not being less than in the district from which he shall be removed (*f*). Or they may remove him altogether for "inability or misbehaviour" (*g*).

Duties.] The judge of each district shall attend and hold his court—at each place where Her Majesty shall have ordered that such court shall be holden within his district,—at such times as he shall appoint for that purpose,—so that a court shall be holden in every such place once at least in every calendar month, or such other interval as one of the principal secretaries of state shall order (*h*). And notice of the days on which the court shall be holden, shall be put up in some conspicuous place in the court house, and in the office of the clerk of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in the same conspicuous place in the court house, and in the clerk's office (*i*).

He shall hear and determine the causes pending in his court, in a summary way (*k*); and shall determine all questions as

(*a*) Stat. s. 9.
(*b*) Id. s. 10.
(*c*) Id. s. 12.
(*d*) Id. ss. 11, 13, 14.
(*e*) Id. s. 16.
(*f*) Id. s. 19.
(*g*) Id. s. 18.
(*h*) Id. s. 56.
(*i*) Id.
(*k*) Id. s. 58.

well of fact as of law, in actions under 5*l.*,—and in actions where the plaintiff claims more than 5*l.*, if a jury be not required by either party (*l*). See further, *post*, under the title "*Hearing*," &c.

If his name be inserted in the commission of the peace for the county, &c. within which his district is situate, he may and shall act as such, although he may not have the qualification by estate required by law in the case of other justices (*m*).

But "no judge, appointed under this Act, shall, during his continuance as such judge, practise as a barrister within the district for which his court is holden under this Act,—except those barristers already appointed to preside or hold the said courts in Bath, Bristol, Liverpool, Manchester, Sheffield, Ecclesall and Middlesex, and now practising in chambers as conveyancing counsel, who may continue such practice" (*n*).

Salary.] Certain fees in each cause, proportioned to the amount sought to be recovered, are payable to the judge of each district (*o*); a list of them will be found in the Appendix, p. 199. But it shall be lawful for Her Majesty, with the advice of her privy council, to order that the judges shall be paid by salaries instead of fees, or in any other manner (*p*), such salary not to exceed 1200*l.* a year (*q*),—except in the case of judges who acted in the same capacity previously to the passing of this Act, in any court mentioned in schedule A., whose salaries shall not be limited to any sum less than the average of their emoluments for the last seven years (*r*). But the commissioners of the treasury may allow, in each case, such sum as they shall deem reasonable, to defray travelling expenses, with reference to the size and circumstances of each district (*s*).

Deputy.] In case of illness or unavoidable absence, (the cause whereof shall be entered on the minutes of the court), the judge, or, in case of his inability, the lord chancellor or chancellor of the duchy of Lancaster in their respective jurisdictions, may appoint some other person,—who shall be a judge appointed under this Act,—or who shall have practised as a barrister for at least three years,—or who shall have practised as an attorney of one of Her Majesty's superior courts of common law for ten years, but not then residing or practising as an attorney in the district for which the court is holden,—to act as the deputy of such judge, during such illness or unavoidable absence (*t*). So, the judge, with the

(*l*) Stat. ss. 69, 70.
(*m*) Id. s. 21.
(*n*) Id. s. 17.
(*o*) Id. s. 37.
(*p*) Id. s. 39.
(*q*) Id. s. 40.
(*r*) Id.
(*s*) Id.
(*t*) Id. 20.

approval of the lord chancellor or chancellor of the duchy, may appoint a deputy,—who shall be a judge appointed under this Act,—or who shall have practised as a barrister for at least three years,—to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months (*u*).

And every deputy, so appointed, shall have all the powers and privileges, and perform all the duties, of the judge for whom he shall have been so appointed (*v*).

In what cases they may punish for contempt.] If any person shall wilfully insult the judge,—or any juror,—or any bailiff, clerk or officer of the court for the time being,—during his sitting or attendance in court, or in going to or returning from the court;—or if any person shall wilfully interrupt the proceedings of the court or otherwise misbehave in court:—it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders under this Act, for any time not exceeding seven days,—or to impose a fine not exceeding 5*l.* for every such offence, and in default of payment thereof to commit the offender to prison for any time not exceeding seven days, unless the said fine be sooner paid (*w*).

SECTION III.

The Officers of the Court.

1. *The Clerk.*

Appointment.] In every court, established under the authority of this Act, there shall be a clerk, who shall be an attorney of one of the superior courts of common law (*a*). He is appointed by the judge of the court, subject to the approval of the lord chancellor; and he may also be removed by the judge for inability or misbehaviour, subject to the like approval (*b*). In populous districts, the lord chancellor may direct that two persons be appointed to execute the office jointly, under such regulations as to the division of duties and emoluments, as from time to time shall be made by order of the court (*c*).

(*u*) Stat. s. 20.
(*v*) Id.
(*w*) Id. s. 113, and see s. 49.
(*a*) Id. s. 24.
(*b*) Id.
(*c*) Id. s. 25.

And he shall not, nor shall his partner, act as treasurer or high bailiff of the court (*d*), or be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court (*e*), under the penalty of 50*l.* (*f*).

Also, such assistant clerks as may be necessary, shall be provided and paid by the clerk of the court (*g*).

Duties.] The clerk, with such assistant clerks as aforesaid in cases requiring the same, "shall issue all summonses, warrants, precepts and writs of execution,—and register all orders and judgments of the said court,—and keep an account of all proceedings of the court,—and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all monies paid into or out of court, and shall enter an account of all such fees, fines and monies in a book belonging to the court to be kept by him for that purpose,—and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer" (*h*).

He shall also keep the several books, and in the form mentioned in the schedule to the rules of court (*i*); and every entry in such books shall have a number prefixed, corresponding to the number of the plaint to which it refers (*k*).

In case of proceedings not provided for by the forms in the schedule to the rules of court, the clerk of the court shall issue the necessary process, using, where practicable, the forms prescribed in the schedule, as guides in framing the same (*l*).

And all matters and things, required to be done by the clerk of the court, may be done either by him or by the assistant clerk or clerks provided by him (*m*).

The clerk of every court shall have an office at each place where the court of which he is clerk is held (*n*). And such office shall be open daily; and the office hours shall be from ten in the morning until four in the afternoon (*o*).

Deputy.] The clerk, with the approval of the judge,—or (in case of inability of the clerk) the judge,—may appoint from time to time a deputy, qualified to be appointed clerk of the court, at any time when the clerk shall be prevented by illness or unavoidable absence from acting in such office, and may remove such deputy at his pleasure; and such deputy, while acting under such appointment, shall have the like powers and privileges, and be subject to the like provisions, duties and penalties for

(*d*) Stat. s. 28.
(*e*) Id. s. 29.
(*f*) Id. s. 30.
(*g*) Id. s. 24.
(*h*) Id. s. 27.
(*i*) Rule 40.
(*k*) Rule 41.
(*l*) Rule 51.
(*m*) Rule 43.
(*n*) Rule 42.
(*o*) Rule 44.

misbehaviour, as if he were the clerk of the said court for the time being (*p*).

Fees.] The clerk shall be paid by fees, until Her Majesty by the advice of her privy council shall otherwise direct (*q*), which fees shall be according to the schedule D. to the Act annexed (*r*), and may be seen in the Appendix, p. 199. Or, instead of fees, Her Majesty, with the advice of her privy council, may order the clerk to be paid by salary, or in any other manner (*s*);—such salary not to exceed 600*l.* a year, exclusive of salaries to his clerks employed in the business of the court, and other expenses incidental to the office. But in the case of a clerk, who, before the passing of this Act, was clerk in one of the courts in schedule A., his salary shall not be less than the average of his emoluments for the last seven years. The commissioners of Her Majesty's treasury, however, may allow in each case, such a sum as they shall deem reasonable, to defray travelling expenses, with reference to the size and circumstances of each district (*t*).

A table of the fees payable to the judge, clerk and high bailiff, "shall be put up in some conspicuous place in the court house and in the clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default, payment thereof shall be enforced by order of the judge by such ways and means as any debt or damage ordered to be paid by the court can be recovered;—and the fees upon executions shall be paid into court at the time of the issue of the warrant of execution, and shall be paid by the clerk of the court to the bailiff upon the return of the warrant of execution, and not before;"—"and in every court holden under this Act, in which the fees allowed to be taken by the judges, clerks or bailiffs of the court, shall appear to be more than sufficient, it shall be lawful for the secretary of state to order that a certain part only of their fees shall be paid to them respectively, not exceeding (in the case of judges and clerks) the sums mentioned as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the treasurer of the court, and shall form part of the general fund of the court" (*u*).

Security.] The clerk of every court under this Act, shall give security for such sum and in such manner and form as

(*p*) Stat. s. 26.
(*q*) Id. s. 24.
(*r*) Id. s. 37.
(*s*) Id. s. 39.
(*t*) Id. s. 40.
(*u*) Id. s. 37.

and for the payment of the bailiffs and officers appointed to assist him, according to such scale of remuneration as shall be from time to time approved of by the judge (*l*). A list of the fees payable to the high bailiff, will be found in the Appendix p. 200; and as to the receipt and application of them, see *ante*, p. 11.

But instead of fees, it shall be lawful for Her Majesty, with the advice of her privy council, to order the bailiffs and officers of the court to be paid by salaries, or in any other manner (*m*); and in such case all sums payable in the name of fees to such officers of the court as shall be paid by salaries, shall be paid from time to time to the treasurer of the court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the consolidated fund (*n*).

Security.] The high bailiff shall give security for such sum, and in such manner and form, as the commissioners of Her Majesty's treasury from time to time shall order, for the due performance of his office, and for the due accounting for and payment of all monies received by him under this Act, or which he may become liable to pay for any misbehaviour in his office (*o*).

3. *The Treasurer.*

Appointment.] The commissioners of the treasury shall appoint so many persons as they shall think fit, to be treasurers of the courts under this Act, and may remove any such treasurer if they shall see occasion so to do, and appoint another person in his room (*p*).

Such treasurer, his partner or clerk, or any person in the service or employment of such treasurer or his partner, shall not act as clerk or high bailiff of the court (*q*), nor shall he, by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court (*r*), under the penalty of 50*l.* (*s*)

Salary.] Every such treasurer shall be paid by salary, in such manner and to such amount as the commissioners of the treasury from time to time shall order; such salary to be paid out of the consolidated fund (*t*).

(*l*) Stat. s. 33.
(*m*) Id. s. 39.
(*n*) Id.
(*o*) Id. s. 36.
(*p*) Id. s. 23.
(*q*) Id. s. 28.
(*r*) Id. s. 29.
(*s*) Id. s. 30.
(*t*) Id. s. 23.

Security.] The treasurer of every court holden under this Act, shall give security for such sum, and in such manner and form, as the commissioners of the treasury from time to time shall order, for the due performance of his office, and for the due accounting for and payment of all monies received by him under this Act, or which he may become liable to pay for any misbehaviour in his office (*u*).

4. *Officers of the Court, generally.*

How protected.] If any officer or bailiff of any court holden under this Act, shall be assaulted while in the execution of his duty,—or if any rescue shall be made or attempted to be made of any goods levied under process of the court,—the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the court, or before a justice of the peace as hereinafter provided; and it shall be lawful for the bailiff of the court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such court or justice accordingly (*v*).

Actions against them.] And for the protection of persons acting in the execution of this Act, all actions and prosecutions against them for anything done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, —and shall be commenced within three calendar months after the fact committed, and not afterwards or otherwise;—and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action;—and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money have been paid into court, with costs, by or on behalf of the defendant (*w*).

And if any person shall bring any suit in any of Her Majesty's superior courts of record, in respect of any grievance committed by any clerk, bailiff or officer of any court holden under this Act, under colour or pretence of the process of the said court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of twenty pounds,—no costs shall be awarded to the plaintiff in such action, unless the judge shall certify in court upon the back of the record, that the action was fit to be brought in such superior court (*x*).

How punished for misconduct.] If any clerk, bailiff, or officer

(*u*) Stat. s. 36.
(*v*) Id. s. 114.
(*w*) Id. s. 138.
(*x*) Id. s. 139.

and for the payment of the bailiffs and officers appointed to assist him, according to such scale of remuneration as shall be from time to time approved of by the judge (*l*). A list of the fees payable to the high bailiff, will be found in the Appendix p. 200; and as to the receipt and application of them, see *ante*, p. 11.

But instead of fees, it shall be lawful for Her Majesty, with the advice of her privy council, to order the bailiffs and officers of the court to be paid by salaries, or in any other manner (*m*); and in such case all sums payable in the name of fees to such officers of the court as shall be paid by salaries, shall be paid from time to time to the treasurer of the court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the consolidated fund (*n*).

Security.] The high bailiff shall give security for such sum, and in such manner and form, as the commissioners of Her Majesty's treasury from time to time shall order, for the due performance of his office, and for the due accounting for and payment of all monies received by him under this Act, or which he may become liable to pay for any misbehaviour in his office (*o*).

3. *The Treasurer.*

Appointment.] The commissioners of the treasury shall appoint so many persons as they shall think fit, to be treasurers of the courts under this Act, and may remove any such treasurer if they shall see occasion so to do, and appoint another person in his room (*p*).

Such treasurer, his partner or clerk, or any person in the service or employment of such treasurer or his partner, shall not act as clerk or high bailiff of the court (*q*), nor shall he, by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court (*r*), under the penalty of 50*l.* (*s*)

Salary.] Every such treasurer shall be paid by salary, in such manner and to such amount as the commissioners of the treasury from time to time shall order; such salary to be paid out of the consolidated fund (*t*).

(*l*) Stat. s. 33.
(*m*) Id. s. 39.
(*n*) Id.
(*o*) Id. s. 36.
(*p*) Id. s. 23.
(*q*) Id. s. 28.
(*r*) Id. s. 29.
(*s*) Id. s. 30.
(*t*) Id. s. 23.

Security.] The treasurer of every court holden under this Act, shall give security for such sum, and in such manner and form, as the commissioners of the treasury from time to time shall order, for the due performance of his office, and for the due accounting for and payment of all monies received by him under this Act, or which he may become liable to pay for any misbehaviour in his office (*u*).

4. *Officers of the Court, generally.*

How protected.] If any officer or bailiff of any court holden under this Act, shall be assaulted while in the execution of his duty,—or if any rescue shall be made or attempted to be made of any goods levied under process of the court,—the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the court, or before a justice of the peace as hereinafter provided; and it shall be lawful for the bailiff of the court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such court or justice accordingly (*v*).

. . . . . .

Actions against them.] And for the protection of persons acting in the execution of this Act, all actions and prosecutions against them for anything done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, —and shall be commenced within three calendar months after the fact committed, and not afterwards or otherwise;—and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action;—and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money have been paid into court, with costs, by or on behalf of the defendant (*w*).

And if any person shall bring any suit in any of Her Majesty's superior courts of record, in respect of any grievance committed by any clerk, bailiff or officer of any court holden under this Act, under colour or pretence of the process of the said court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of twenty pounds,—no costs shall be awarded to the plaintiff in such action, unless the judge shall certify in court upon the back of the record, that the action was fit to be brought in such superior court (*x*).

How punished for misconduct.] If any clerk, bailiff, or officer

(*u*) Stat. s. 36.
(*v*) Id. s. 114.
(*w*) Id. s. 138.
(*x*) Id. s. 139.

of the court, acting under colour or pretence of the process of the said court, shall be charged with extortion or misconduct, —or with not duly paying or accounting for any money levied by him under the authority of this Act,—it shall be lawful for the judge to inquire into such matter in a summary way,—and for that purpose to summon and enforce the attendance of all necessary parties, in like manner as the attendance of witnesses in any case may be enforced,—and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as he shall think just,—and also, if he shall think fit, to impose such fine upon the clerk, bailiff or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court (*y*).

And every treasurer, clerk, bailiff or other officer, employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of any thing done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, —shall, upon proof thereof before the said court, and (in the case of a clerk, treasurer or high bailiff) on allowance of the finding of the court by the lord chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided (*z*).

Not to act as attornies in the court.] No clerk, treasurer, high bailiff, or other officer of the court, shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court, under the penalty of 50*l.*, to be recovered by any person who will sue for the same, in an action of debt or on the case, in any of Her Majesty's courts of record (*a*).

SECTION IV.

Counsel and Attornies.

In what cases.] No person shall be entitled to appear for any other party to any proceeding in any of the said courts, unless

(*y*) Stat. s. 116. (*z*) Id. s. 117. (*a*) Id. s. 29, 30.

he be an attorney of one of Her Majesty's superior courts of record,—or a barrister-at-law instructed by such attorney on behalf of the party,—or (by leave of the judge) any other person allowed by the judge to appear instead of such party;—but no barrister, attorney or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under this Act (*b*). That an officer of the court, cannot act as attorney or agent for any party in these courts, *vide ante*, p. 16.

Fees allowed.] No person, not being an attorney admitted in one of Her Majesty's superior courts of record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court (*c*).

And no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than forty shillings,—or to have or recover more than ten shillings for his fees and costs, unless the debt or damage claimed shall be more than 5*l.*,—or more than fifteen shillings in any case within the summary jurisdiction given by this Act (*d*).

And in no case shall any fee, exceeding 1*l.* 3*s.* 6*d.*, be allowed for employing a barrister as counsel in the cause (*e*).

And the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs—in the case of a plaintiff where less than 5*l.* is recovered,—or in the case of a defendant where less than 5*l.* is claimed,—or in any case unless by order of the judge (*f*).

SECTION V.

The Accounts, and how and by whom audited.

Of the clerk.] The clerk shall keep an account of all court fees and fines payable or paid into court, and of all monies paid into or out of court, and shall enter an account of all such fees, fines and monies in a book belonging to the court, to be kept by him for that purpose,—and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer (*g*).

And by sect. 41, the clerk of every court holden under this Act, from time to time as often as he shall be required so to do by the treasurer or judge of the court, and in such form as the

(*b*) Stat. s. 91.
(*c*) Id.
(*d*) Id.
(*e*) Id. s. 91.
(*f*) Id.
(*g*) Id. s. 27.

treasurer or judge shall require, shall deliver to the treasurer a full account in writing of the fees received in that court under the authority of this Act,—and a like account of all fines levied by the court and of the expenses of levying the same,—and shall pay over to the treasurer, quarterly or oftener in every year, by order of the court, the monies remaining in his hands, over and above his own fees, and such balance as he shall be allowed by order of the court to retain for the current expenditure of the court.

And by sect. 42, the treasurer shall from time to time, quarterly or oftener, as shall be directed by order of the court, audit and settle the accounts of the clerk and other officers of the court,—and shall receive the balance of the various monies which such clerk and other officers shall have received under this Act,—and shall pay over to the judge of the court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act,—and shall from time to time pay the balance remaining in his hands, or so much thereof as he shall be directed to pay, into such bank, or otherwise, as shall be directed by the commissioners of the treasury.

Also, by sect. 46, the clerk of the court, once in every year or oftener if required, shall send to the commissioners of audit an account of all sums paid over by him to the treasurer of the court.

Of the treasurer.] The treasurer shall once a year send his account to the commissioners of audit, who shall audit the same (*h*); and the accounts when audited shall be sent to the commissioners of the treasury (*i*).

SECTION VI.

The General Fund.

For raising a fund for providing a court house and offices, and for paying off any monies which may be borrowed as aforesaid, and the interest due in respect thereof, the clerk of every court, in which and while it shall be necessary to raise such fund, shall demand and receive from the plaintiff in any suit brought in that court the sum of sixpence when the debt or damage claimed shall exceed twenty shillings and shall not exceed forty shillings;—and for every claim exceeding forty shillings, one twentieth part thereof; neglecting any sum less than sixpence in estimating such twentieth part,—or such other sum in either case not exceeding the rates hereinbefore

(*h*) Stat. s. 43, 45. (*i*) Id. s. 47.

mentioned, as one of the principal secretaries of state, with the consent of the commissioners of the treasury, from time to time shall order;—which sum, if not paid in the first instance by the plaintiff upon suit brought in the court, may be deducted from the sum recovered for the plaintiff, and shall be considered as costs in the cause; and the clerk of the court shall keep an account of all monies so paid to him, and shall pay over the amount from time to time to the treasurer of the court, and the amount thereof shall accumulate, to form a fund to be called "The General Fund of the County Court of ——, at ——," and shall be applied in the first place towards paying the interest of the several sums so borrowed, and in the second place towards paying the rent and other expenses necessarily incurred in holding the court, &c. (*k*)

All penalties, forfeitures and fines, recoverable under this Act, when paid and levied, shall also be paid to the general fund (*l*).

Also, suitors' money, unclaimed for six years, shall go to the general fund (*m*).

And lastly, where the secretary of state shall order that a part only of the fees received shall be paid to the judge, clerk or bailiff, the residue shall go to the general fund (*n*).

(*k*) Stat. s. 52.
(*l*) Id. s. 133.
(*m*) Id. s. 112.
(*n*) Id. s. 37, *ante*, p. 11.

THE

PRACTICE

OF THE

NEW COUNTY COURTS.

BESIDES the regular proceedings in an action in these courts, there are some peculiarities in the action of replevin, and in the action for the recovery of small tenements after the term has ended or been determined by a notice to quit; I propose therefore first, to treat of the regular proceedings in an action, and afterwards to treat of replevin, and of the action for the recovery of small tenements, in separate chapters.

CHAPTER I.

Proceedings in ordinary cases.

Section 1. *The Plaint.*
2. *The Summons.*
3. *The Defence, including payment of Money into court, Set-off, &c.*
4. *Evidence generally, Witnesses, &c.*
5. *Evidence for the Plaintiff and Defendant, in the different Actions.*
6. *The Hearing and Adjudication.*
7. *Execution.*
8. *Commitment for Fraud.*
9. *Records.*
10. *Removal of Cause.*

SECTION I.

The Plaint.

On the application of any person desirous to bring a suit under this Act, the clerk of the court shall enter in a book, to be kept for this purpose in his office, a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought (*a*). The form of the entry is given in the schedule to the rules of court (*b*).

No misnomer or inaccurate description of any person or place in any such plaint, shall vitiate it, so as the person or place be therein described so as to be commonly known (*c*).

(*a*) 9 & 10 Vict. c. 95, s. 59. (*b*) Rule 1. (*c*) Stat. s. 59.

Each of these plaints shall be numbered in every year, according to the order in which it shall be entered (*d*).

The court in which this plaint is to be entered, has been fully described in treating of the jurisdiction of these courts generally, *ante*, p. 4.

On entering the plaint, the plaintiff, if the sum sought to be recovered exceed 5*l*., shall deliver at the office of the clerk, as many copies of a statement of the particulars of his demand or cause of action, as there are defendants, with an additional copy to file. Provided always that in all cases, the judge, in his discretion, and on such terms as he may think fit, may adjourn the cause at the hearing, for the delivery of a statement of particulars or further particulars (*e*).

The following may be the form of the

Particulars of Plaintiff's Demand.

No. —.

In the county court of ——, *at* ——.

Between A. B. plaintiff,
and
C. D. defendant.

The following are the particulars of the Plaintiff's demand in this Action:—

C. D. —— *Dr. to* —— *A. B.*

[Here, in actions for a debt, set out the account, giving the defendant credit for such sums, &c. as are not disputed; and let the plaintiff sign it.] In other actions, the facts constituting the cause of action, with time, place, &c. must be stated shortly: in actions on bills of exchange or promissory notes, it may be convenient to set out a copy of the bill, or note, and to state the indorsements, if necessary; in actions on bonds, to state the names of the parties, the date, the amount of the penalty, and the condition; in debt on deed, to state the names of the parties, the date, and the covenant (if there be one) or the substance of the contract; in covenant, to state the names of the parties, the date, the covenant, &c. the breach, with time, &c.; in detinue, to set out the articles, and their respective values; in trespass to land, the name or description of the premises, and the date and nature of the trespass; in other cases of trespass, the nature of the trespass; in case, a description of the nuisance or other cause of action; in trover, a list and particulars of the goods, and their collective value.

Also, at the time of entering the plaint, the clerk of the court shall give the plaintiff a note, according to the form in the schedule to the rules of court; and no money shall be paid

(*d*) Stat. s. 59. (*e*) Rule 2.

out of court to the plaintiff, unless on production of such note, or by order of the judge (*f*).

The following is the form of

Plaintiff's Note on entering Plaint.

No. —.*

County court of ——, at ——.

£——. Fees paid.

The above cause [or *causes*] *will be tried at ——, on —— at —— o'clock in the forenoon.*

(*Signed*) ——, *Clerk of the court.*

To A. B., the above-named plaintiff.

Office at ——. Hours of attendance, from 10 *till* 4.

Take notice, you must bring this note with you when you come to the court, or to the office of the clerk, for any purpose, and in case of loss of it you must immediately give notice thereof at my office.

You may have a summons to compel the attendance of any witnesses, or for the production of any books or documents, you may require, on early application at the office of the clerk, and on payment of the expenses thereof.

* Where a plaintiff enters several plaints, one note will be sufficient, by specifying the number of the plaints.

If the summons be not afterwards served in time to enable the plaintiff to try his cause on the day mentioned in this note, it does not seem to be necessary to give the plaintiff any notice of it, or that he should obtain any fresh note.

SECTION II.

The Summons.

Upon the plaint being entered, a summons, stating the substance of the action, and bearing in the margin the same number as the plaint, shall issue under the seal of the court (*g*). The following is the

Summons to appear to Plaint.

No. —.

In the county court of ——, at ——.

(Seal.)

A. B., plaintiff,
against
C. D., defendant.

You are hereby summoned to appear at a county court to be holden at ——, on the —— day of ——, at the hour of ——

(*f*) Rule 3. (*g*) Stat. s. 50.

in the forenoon, to answer the above-named plaintiff in an action on contract [or *in an action for tort*], [here state the substance of the cause of action] —— [*the particulars of which are hereunto annexed* where the cause of action exceeds 5*l.*]; *and take notice, that in case you shall have been personally served with this summons, an application may be made immediately after a judgment has been obtained against you, to commit you to prison, under the provisions of the statute in that behalf made and provided, in which case the judge of the said court will proceed to hear and determine such application, and make such order thereupon as he shall think fit, whether you shall be then present or not.*

	£	s.	d.
Debt or claim .			
Cost of summons and service . .			
Paying money into and out of court; entering satisfaction, &c. . . .			
£			

Given under the seal of the said court, this —— day of ——, 18—.

——, *Clerk of the court.*

To ——, the above-named defendant.

N. B.—See notice at back of this Summons.

[To be indorsed on the Summons.]

Notice.

If you admit the whole or any part of the plaintiff's demand, by paying into the office of the clerk of the court at ——, the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless in case of part payment, the plaintiff, at the hearing, shall prove a demand against you exceeding the sum so paid into court.

If you have any defence to the demand, by way of set-off, or on account of your being an infant, or married woman, or by reason of the statute of limitations, or of your discharge by bankruptcy, or under any Act for the relief of insolvent debtors, the same cannot be admitted unless you give notice thereof in writing, and, if a set-off, of the particulars of such set-off, to the clerk of the court, at the above-named office, five clear days before the day of hearing.

If the debt or claim exceed 5l., you may have the cause tried by a jury, on giving notice thereof in writing at the said office of the clerk, two clear days at least before the day of trial, and on payment of the fees for summoning, and payable to such jury.

Notices of defence cannot be served, unless the fees for entering and serving the same be paid at the time the notices are given.

You may have a summons to compel the attendance of any witness, and the production of any books or documents, on applying at the office of the clerk of the court.

Bring this summons with you, when you come to the court or to the office of the clerk.

Office hours, from 10 *till* 4.

The actions, for which the summons may issue, are here classed under two heads, actions on contract, and actions for torts. The actions on contracts are, Assumpsit, Account, Debt, Covenant, Detinue. The actions for torts, are, Trespass to Land, Trespass to Personal Property, Trespass to the Person, Case, Trover, and Replevin. In stating the cause of action in the summons, it is only required to state the substance of it (*a*), the particulars of demand rendering such statement sufficiently certain (at least in cases where the cause of action exceeds 5*l*.) The form, therefore, in which the cause of action may be stated in the summons, may be as follows:

In assumpsit:—"*in an action on contract:—For that you for a certain consideration promised the plaintiff* [*to,*" &c. stating the agreement], *but that you have not performed your said promise; whereby the plaintiff has sustained damage to the amount of £——.*

For that you are the [*acceptor*] *of a bill of exchange, dated ——, drawn by A. B., and indorsed to the plaintiff, for £——, at two months after date, and now due and unpaid.*

For that you are the [*indorser*] *of a bill of exchange, dated, ——, drawn by A. B., upon and accepted by C. D., for £——, at two months after date, and indorsed to the plaintiff, which was duly presented for payment when due, and was not paid, of which presentment and non-payment you have had due notice.*

For that you are the drawer of a bill of exchange, dated ——, drawn by you upon and accepted by A. B., payable to the plaintiff or his order, for £——, which was duly presented for payment when due, and was not paid, of which presentment and nonpayment you have had due notice.

For that you are the [*maker*] *of a promissory note for £——, dated ——, at two months after date, payable to A. B., and indorsed to the plaintiff, and now due and unpaid.*

For that you are the indorser of a promissory note of A. B. for £——, payable to C. D., and by him indorsed to you, and by you indorsed to the plaintiff; which was duly presented for payment when due, and was not paid, of which presentment and nonpayment you have had due notice.

(*a*) Stat. s. 50, *ante*, p. 28.

In debt on simple contract:—*in an action on contract: For that you are indebted to the plaintiff in £——, for* [*goods sold and delivered to you by the plaintiff*];—*and that you have not paid the same.*

Or *for goods bargained and sold to you by the plaintiff;*

Or *for work done for you by the plaintiff;*

Or *for money lent to you by the plaintiff;*

Or *for money paid for you by the plaintiff;*

Or *for money received by you for the use of the plaintiff;*

Or *for money found due from you to the plaintiff on an account stated between you;*

Or *for interest on money lent to you by the plaintiff, which interest you agreed to pay him;*

Or *for work, labour, care and diligence done, performed, and bestowed for you by the plaintiff as an attorney;*

Or *for medicines and other things administered, applied, and delivered to you and your family by the plaintiff, as a surgeon and apothecary;*

Or *for the use and occupation by you of certain rooms and lodgings of the plaintiff;*

Or *for the good will of a certain business relinquished to you by the plaintiff;*

Or *for fixtures of and in a certain dwelling-house sold and delivered to you by the plaintiff;*

Or *for meat, drink, washing and lodging provided for you by the plaintiff;*

Or *for horse-meat and stabling for your horse, provided by the plaintiff at your request;*

Or *for depasturing and feeding certain of your cattle by the plaintiff at your request;*

Or *for the use and hire of* [*a horse and cart,* or *furniture,* &c.] *let to you by the plaintiff;*

Or *for the carriage of goods for you by the plaintiff.*

In debt on bond:—*in an action on contract: For that by your bond, under your seal, dated ——, you are indebted to the plaintiff in the sum of £——, and that you have not paid the same.*

In debt on deed:—*in an action on contract: For that by your deed, under your seal, dated ——, you granted an annuity of £—— to the plaintiff, and that £—— for half a year's annuity is now due from you to the plaintiff, and is unpaid.*

In covenant:—*in an action on contract: For that by your deed, under your seal, dated ——, you covenanted to* [here state the covenant shortly] *and that you have broken the said covenant, whereby the plaintiff has sustained damage to the amount of £—.*

In detinue;—*in an action on contract: For divers goods and*

chattels, of the plaintiff, of great value, to wit, of the value of £——, which you unlawfully detain from him.

In trespass to land, &c.:—*in an action for tort: For that you unlawfully entered* [*a field*] *of the plaintiff, and there* [stating what he did], *whereby the plaintiff has sustained damage to the amount of £——.*

In trespass to personal property:—*in an action for tort: For that you took and carried away divers goods of the plaintiff,* [&c. as the cause of action may be] *whereby the plaintiff has sustained damage to the amount of £——.*

Or—*For that you broke to pieces, spoiled and injured divers pieces of furniture of the plaintiff, whereby he sustained damage to the amount of £——.*

In trespass to the person:—*in an action for tort: For that you assaulted and beat the plaintiff, whereby he sustained damage to the amount of £——.*

Or—*For that you falsely and unlawfully imprisoned the plaintiff, against his will, whereby he sustained damage to the amount of £——.*

In case for a nuisance:—*in an action for tort: For that you, having a privy upon your premises adjoining the plaintiff's dwelling-house, and separated therefrom by a wall which you were bound to repair, suffered the said wall to be so much out of repair that the filth from the said privy oozed through the said wall into the kitchen of the plaintiff's said house, and a most offensive stench penetrated into the said kitchen; to the great nuisance of the plaintiff, his family and servants, and whereby the plaintiff has sustained damage to the amount of £——.*

Or—*For that you kept a dog which you knew was accustomed to bite* [*mankind*], *and the said dog did bite and lacerate* [*the leg of the plaintiff*]: *whereby the plaintiff sustained damage to the amount of £——.*

In case for negligence, &c.:—*in an action for tort: For that you, as a carrier for hire, were intrusted with a certain box of goods of the plaintiff, to be carried from —— to ——, and that by your negligence and carelessness you lost the same; whereby the said plaintiff has sustained damage to the amount of £——.*

Or,—*For that your servant, in driving your horse and cart, by mere carelessness, negligence, unskilfulness, and improper conduct, drove the said cart against the horse and gig of the plaintiff, and thereby broke the plaintiff's gig and injured his horse; whereby the plaintiff has sustained damage to the amount of £——.*

In case for deceit:—*in an action for tort: For that you falsely represented A. B. as fit to be trusted, you at the same time knowing that the said A. B. was insolvent; whereby the plaintiff was induced to give him credit, and whereby the plaintiff has sustained damage to the amount of £——.*

In trover:—*in an action for tort: For that you converted divers goods and chattels* [*bills of exchange and bank notes*] *of the plaintiff to your own use: whereby the plaintiff has sustained damage to the amount of £——.*

In replevin:—*in an action for tort: For that you took the cattle* [or *the goods and chattels*, or *the corn*] *of the plaintiff, and unjustly detained the same against sureties and pledges.*

This summons shall be dated as of the day on which the plaint was entered (*b*). And no misnomer or inaccurate description of any person or place in the summons shall vitiate it, so as the person or place be therein described so as to be commonly known (*c*).

The summons may issue in any district in which the defendant, or one of the defendants, shall dwell or carry on his business at the time of the action brought (*d*).

Or (with leave of the court) it may issue in any district, in which the defendant or one of the defendants shall have dwelt or carried on his business at some time within six calendar months next before the time of the action brought (*e*).

Or (with leave of the court) it may issue in the district in which the cause of action arose (*f*).

The following may be the form of this order for—

Leave to sue in District, in which the Defendant does not reside.

No. —. *In the County Court of* ——, *at* ——.
(Seal.) *Between A. B., plaintiff,*
and
C. D., defendant.

Upon reading the plaint in this action, and upon hearing the said plaintiff, and it appearing to the court here [*that the cause of action in the said plaint mentioned hath arisen*" or "*that the said defendant*, or *C. D. one of the said defendants, hath dwelt* or *carried on business, within six calendar months next before the commencement of this action,*] *within the district of this court, and it appearing thereupon to be right and proper that the said*

(*b*) Rule 4.
(*c*) Stat. s. 59.
(*d*) Id. s. 60.
(*e*) Id. s. 60.
(*f*) Id.

action should be tried in this court: it is therefore ordered by the judge of the said court that leave be given, and leave is hereby accordingly given, that a summons may issue in and from this court, at the suit of the said plaintiff against the said defendant, for the cause of action in the said plaint mentioned.

Given under the seal of the court, this —— day of ——, 18—.

By the court.

—— Clerk.

And where the cause of action is against two or more persons jointly answerable, it shall be sufficient if process be sued out against and served upon any one or more of them; and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction; and every such person against whom such judgment shall be obtained, and who shall have satisfied the same, shall be entitled to demand and recover, in the court under this Act, contribution from any other person jointly liable with him (*g*). The effect of this provision is, that where a plaintiff has a joint cause of action against two or more, he may either proceed against those of them who reside or carry on business within the district,—or, if the others have resided or carried on business in the district within six calendar months preceding, or if the cause of action arose within the district, he may, by obtaining an order for leave, as above mentioned, serve a summons upon the others, and make them parties to the action. The summons in these cases, should be against all the parties you intend to sue.

All summonses must be sealed or stamped with the seal of the court, out of which it issues (*h*). And every person who shall forge the seal or any process of the court,—or who shall serve or enforce any such forged process, knowing the same to be forged,—or shall deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false,—or who shall act or profess to act under any false colour or pretence of the process of the said court,—shall be guilty of felony (*i*).

When and how served.] On issuing each summons, to be served, the clerk of the court shall annex to it one of the copies of the statement of the particulars of the plaintiff's demand, which were furnished to him by the plaintiff, (as already mentioned) (*k*), sealed with the seal of the court (*l*). The bailiff who is to serve the summons, must have a copy of it, which

(*g*) Stat. s. 68.
(*h*) Id. s. 57.
(*i*) Id.
(*k*) *Supra.*
(*l*) Rule 5.

he must indorse and file with the clerk of the court, after he has served the original, as directed, *post*, p. 32. But as no provision is made for the clerk issuing such copies, and no fee is allowed him for doing so, it should seem to be the duty of the high bailiff to have these copies prepared.

Every summons must be served ten clear days before the holding of the court at which it shall be returnable (*m*).

The service must be either personal, or by delivering the same to some person at the place of abode or the place of business of the defendant (*n*). And where any defendant shall, by keeping his house or place of abode closed, or by violence or threats, prevent any bailiff from serving the summons as here directed, and such summons shall have been affixed on the door of such house or place of abode, or otherwise served as nearly as may be according to the mode hereinbefore directed, such service shall be deemed good service (*o*).

Where a defendant shall be living or serving on board of any ship or vessel,—or be residing or quartered in any barracks, and serving Her Majesty as a soldier or marine,—it shall be sufficient service to deliver the summons to the senior officer on board, or to the person who may at the time have charge of such ship or vessel,—or to the adjutant of the corps, or any officer or serjeant of the company, to which such soldier or marine shall belong or be attached (*p*).

Where he shall be working in any mine or other works carried on under ground, and the bailiff shall not be able to serve him with a summons, as hereinbefore directed, it shall be sufficient service to deliver the summons to the engine-man, banks-man, or other person in charge of such mine or works (*q*).

Provided that in all cases where the summons shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the judge, that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day (*r*).

And where any such summons has not been served as hereinbefore directed, the judge may, in his discretion, in order to save the statute of limitations, direct another summons or successive summonses to be issued, bearing the same date and number as the first summons (*s*).

And note, the above rules, (except rule 11,) as to the mode of service of summonses to appear to a plaint,—shall apply to the service of all summonses, judgments, orders, notices,

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(*m*) Rule 6.
(*n*) Rule 7.
(*o*) Rule 10.
(*p*) Rule 8.
(*q*) Rule 9.
(*r*) Rule 11.
(*s*) Rule 12.

and process, whatsoever, issuing under the authority of this Act, except where otherwise directed by the Act, or any rule made under the authority thereof (*t*).

It cannot however be served on Sunday, Christmas-day, or Good-Friday (*u*).

If the summons is to be served out of the district of the court from which it issued, it may be served by the bailiff of any court holden under this Act in any part of England; and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons shall have issued, within the jurisdiction of the court for which he acts (*v*).

And if it become necessary to prove the service, in cases where the summons has been served out of the district of the court, the service may be proved by affidavit, purporting to be sworn before a judge of any of these local courts, or before a master extraordinary in chancery, or any person now authorized by law to take affidavits; and the fee for taking such affidavit shall not be more than one shilling, and shall be costs in the cause (*w*).

The following is the form of the

Affidavit of Service.

No. —. In the county court of ——, at ——.
Between A. B., plaintiff,
and
C. D., defendant.

E. F. of ——, one of the bailiffs of the county court of —— [or *of the said court*], *maketh oath and saith, that he did on the —— day of ——, duly serve the said —— with a summons* [or other process], *a true copy whereof is hereunto annexed marked ——, at ——, within the jurisdiction of the said county court of ——, by delivering the same personally to the said C. D.* [if the service was not personal, state how served].

E. F.

Sworn before me, &c., the —— day of ——.

Indorse the summons or other process, "*this paper, marked '——,' is the paper referred to in the annexed affidavit.*"

How returned.] Eight days before the day of the holding of the court, the high bailiff shall deliver to the clerk of the court a list of all summonses to appear which shall have been served; and the clerk shall forthwith stick up such list in his office (*x*).

(*t*) Rule 14.
(*u*) Rule 50.
(*v*) Stat. s. 61.
(*w*) Id. s. 62.
(*x*) Rule 46.

And the bailiff who serves a summons to appear to a plaint, shall indorse on a copy of such summons, the time and manner of the service thereof, and shall produce such copy, so indorsed, at the court at which such summons shall be returnable; and such copy shall be filed by the clerk of the court (*y*).

But in every case of the unavoidable absence of the bailiff by whom any summons shall have been served, the service of such summons may be proved, if the judge shall think fit, in the same manner as a summons served out of the district of the court, but without additional charge to either of the parties to the suit (*z*).

SECTION III.

The Defence.

Notice thereof, in what cases.] The defendant shall not be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff,—or to set up by way of defence, and to claim and have the benefit of, infancy, coverture, statute of limitations, or of his discharge under any statute relating to bankrupts, or any Act for relief of insolvent debtors,—without the consent of the plaintiff,—unless notice thereof be given to the clerk of the court (*a*). In no other instance of a special defence, is this required; but the matter may be given in evidence at the trial, without notice.

And in every case in which the practice of the court shall require such notice to be given, the clerk of the court shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk (*b*).

Set-off.] Where therefore a defendant desires to set-off any debt or demand alleged to be due to him by the plaintiff, he must give notice thereof in writing to the clerk of the court, and deliver to such clerk two copies of a statement of the particulars of such set-off, five clear days before the return of the summons (*c*). Provided always, that where such notice shall not have been given, the judge in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to

(*y*) Rule 13.
(*z*) Stat. s. 62.
(*a*) Id. s. 76.
(*b*) Id. s. 76.
(*c*) Rule 17.

enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge shall think proper (*d*).

The following may be the form of the

Defendant's Notice to the Clerk, of Set-off.

No. —. *In the county court of* ——, *at* ——.
Between A. B., plaintiff,
and
C. D., defendant.

Take notice, that at the hearing of this cause I will claim a set-off against any debt or demand to be proved against me by the plaintiff. *C. D.*

To ——, *clerk of the said court.*

And the following may be the form of the

Particulars of the Defendant's Set-off.

No. —. *In the county court of* ——, *at* ——.
Between A. B., plaintiff,
and
C. D., defendant.

The following are the particulars of the Defendant's Set-off in this Action.

A. B. —— *Dr. to* —— *C. D.*

[Here set out the account, and let the defendant sign it.]

After receiving the above notice, the clerk of the court shall, as soon as conveniently may be, give notice thereof, together with one of the copies of such particulars of set-off, sealed with the seal of the court, to the plaintiff by post, or by causing it to be delivered at his usual place of abode or business. (*e*)

The following may be the form of the

Clerk's Notice of Set-off.

No. —. *In the county court of* ——, *at* ——.
(Seal.)
Between A. B., plaintiff,
and
C. D., defendant.

The above-named defendant has given notice, that he will, at the hearing of this cause, claim a set-off against any debt or

(*d*) Rule 18. (*e*) Stat. s. 76, Rule 18.

demand to be proved against him by you, and the particulars of such set-off are annexed hereto.

Given under the seal of the court, this —— day of ——, 18—.

——, Clerk of the said court.

To the above-named plaintiff.

[Annex to this notice, the particulars of set-off as furnished by the defendant, sealed with the seal of the court.]

Other special defences.] Also where a defendant intends to rely on the special defence of infancy, coverture, the statute of limitations, or his discharge under any statute relating to bankrupts, or any Act for the relief of insolvent debtors, he shall give notice thereof in writing to the clerk of the court, five clear days before the day on which the summons is returnable: Provided always, that where such notice shall not have been given, the judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge may think proper (*f*).

The following is the form of this

Notice to Clerk, of Special Defence.

No. —. In the county court of —— at ——.

Between A. B., plaintiff,

and

C. D., defendant.

Take notice that upon the hearing of this cause, I the said defendant do intend to set up by way of defence, that I was an infant within the age of twenty-one years, when the supposed claim arose* [or *the supposed contract or agreement was made*].

Or* *that I was, at the time when the supposed claim arose* [or *of making the supposed contract or agreement*], *the wife of —— of ——.*

Or* *that the claim for which I have been summoned, is barred by the statute of limitations.*

Or* *that I am a certificated bankrupt, and obtained my certificate before the commencement of this suit.*

Or* *that I was duly discharged under an Act for the relief of insolvent debtors, on the —— day of ——, at a court held at ——.*

C. D.

To ——, clerk of the said court.

And as soon as conveniently may be, after receiving such

(*f*) Rule 19.

notice, the clerk shall communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business (*g*).

The following may be the form of the

Clerk's Notice of other Defences.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Take notice, that upon the hearing of this cause the defendant intends to give in evidence and rely upon the following ground of defence, in answer to the action.

Dated this —— *day of* ——, 18—.

——, *Clerk of the said court.*

To A. B., the above-named plaintiff.

1. *That he, the defendant, was an infant within the age of twenty-one years when the supposed claim arose* [or *the supposed contract or agreement was made*].
2. *That she, the defendant, was, at the time when the supposed claim arose* [or *of making the supposed contract or agreement*], *the wife of* ——, *of* ——.
3. *That the claim for which he, the defendant, has been summoned, is barred by the statute of limitations.*
4. *That the defendant is a certificated bankrupt, and obtained his certificate before the commencement of this suit.*
5. *That the defendant was duly discharged under an Act for the relief of insolvent debtors, on the* —— *day of* ——, *at a court held at* ——.

Payment of money into court.] In any action brought under this Act, the defendant [five clear days before the return of the summons (*h*)] may pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment (*i*).

Notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff (*k*).

(*g*) Stat. s. 76.
(*h*) Rule 15.
(*i*) Stat. s. 82.
(*k*) Id.

demand to be proved against him by you, and the particulars of such set-off are annexed hereto.

Given under the seal of the court, this —— day of ——, 18—.

——, Clerk of the said court.

To the above-named plaintiff.

[Annex to this notice, the particulars of set-off as furnished by the defendant, sealed with the seal of the court.]

Other special defences.] Also where a defendant intends to rely on the special defence of infancy, coverture, the statute of limitations, or his discharge under any statute relating to bankrupts, or any Act for the relief of insolvent debtors, he shall give notice thereof in writing to the clerk of the court, five clear days before the day on which the summons is returnable: Provided always, that where such notice shall not have been given, the judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge may think proper (*f*).

The following is the form of this

Notice to Clerk, of Special Defence.

No. —. In the county court of —— at ——.

Between A. B., plaintiff,
and
C. D., defendant.

Take notice that upon the hearing of this cause, I the said defendant do intend to set up by way of defence, that I was an infant within the age of twenty-one years, when the supposed claim arose* [or *the supposed contract or agreement was made*].

Or* *that I was, at the time when the supposed claim arose* [or *of making the supposed contract or agreement*], *the wife of —— of ——.*

Or* *that the claim for which I have been summoned, is barred by the statute of limitations.*

Or* *that I am a certificated bankrupt, and obtained my certificate before the commencement of this suit.*

Or* *that I was duly discharged under an Act for the relief of insolvent debtors, on the —— day of ——, at a court held at ——.*

C. D.

To ——, clerk of the said court.

And as soon as conveniently may be, after receiving such

(*f*) Rule 19.

notice, the clerk shall communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business (*g*).

The following may be the form of the

Clerk's Notice of other Defences.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Take notice, that upon the hearing of this cause the defendant intends to give in evidence and rely upon the following ground of defence, in answer to the action.

Dated this —— *day of* ——, 18—.

——, *Clerk of the said court.*

To A. B., the above-named plaintiff.

1. *That he, the defendant, was an infant within the age of twenty-one years when the supposed claim arose* [or *the supposed contract or agreement was made*].
2. *That she, the defendant, was, at the time when the supposed claim arose* [or *of making the supposed contract or agreement*], *the wife of* ——, *of* ——.
3. *That the claim for which he, the defendant, has been summoned, is barred by the statute of limitations.*
4. *That the defendant is a certificated bankrupt, and obtained his certificate before the commencement of this suit.*
5. *That the defendant was duly discharged under an Act for the relief of insolvent debtors, on the* —— *day of* ——, *at a court held at* ——.

Payment of money into court.] In any action brought under this Act, the defendant [five clear days before the return of the summons (*h*)] may pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment (*i*).

Notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff (*k*).

(*g*) Stat. s. 76.
(*h*) Rule 15.
(*i*) Stat. s. 82.
(*k*) Id.

The following are the forms of the

Notice of Payment of the whole Claim.

No. —. *In the county court of* ——, *at* ——.
(Seal.) *Between A. B., plaintiff,*
and
C. D., defendant.

I do hereby give you notice, that the above-named defendant has paid into court the sum of ——, *being the full amount of your demand in this action, together with the costs incurred by you therein.*

Given under the seal of the court, this —— *day of* ——, 18—.
——, *Clerk of the said court.*

To ——, *the above-named plaintiff.*

Notice of Payment of part of the Claim.

No. —. *In the county court of* ——, *at* ——.
(Seal.) *Between A. B., plaintiff,*
and
C. D., defendant.

Take notice, that the sum of £—— *has been paid into court by the above-named defendant, together with the sum of £*—— *for the costs incurred by you up to the time of such payment; and in case you shall accept the same in full satisfaction of your demand, you must give a written notice to that effect, to the clerk of the court, and a like notice to the said defendant, by serving the same on him personally, or by leaving it at his place of abode or business, three clear days before the day of trial, otherwise you will be liable to pay to the said defendant such costs as he may incur in this action after payment into court as aforesaid.*

Given under the seal of the court, this —— *day of* ——, 18—.
——, *Clerk of the court.*

To ——, *the above-named plaintiff.*

If the plaintiff elect to accept, in full satisfaction of the debt or damages claimed, such part thereof as shall have been paid into court by the defendant, and shall give a written notice to that effect to the clerk of the court and a like notice to the defendant by serving the same on such defendant personally or leaving it at his place of abode or business, three clear days before the return of the summons,—the action shall be discontinued, and the plaintiff shall not be liable to any further costs. But in default of giving such notice, the suit will proceed; and if the plaintiff do not appear at the hearing, he shall be liable

to pay to the defendant such costs as he may incur in appearing to try the cause, or such other sum of money as the judge may order (*l*).

The following may be the form of this

Notice of Plaintiff's acceptance of money paid into Court, in satisfaction, &c.

No. —. *In the county court of* ——, *at* ——.
Between A. B., plaintiff,
and
C. D., defendant.

Take notice that I accept the sum of £——, *paid into court in this action by* [*you*] *the said defendant, in full satisfaction of the* [*debt* or *damages*] *claimed by me.* *C. D.*

To ——, *clerk of the said court,*
or *the above-named defendant.*

But if the plaintiff shall elect to proceed, and shall recover no further sum in the action than shall have been so paid into court,—the plaintiff shall pay unto the defendant the costs incurred by him in the action after such payment;—which costs shall be settled by the court, and an order shall be made for payment of the same by the plaintiff (*m*).

Nonjoinder.] Nonjoinder of defendants, is no defence to an action in any of these courts. But if a person have a demand recoverable under this Act against two or more persons jointly answerable, the process may be served on any of them, and judgment obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court (*n*).

SECTION IV.

Evidence generally, Witnesses, &c.

1. *Documentary Evidence.*

Proof of Documents.] Public statutes are never proved; but if any part of your case depend upon a public statute, it may be prudent for you to have a copy of it in court, to aid the recollection of the judge, if necessary. A private statute is

(*l*) Rule 16. (*m*) Stat s. 82. (*n*) Id. s. 68.

proved by an examined copy from the roll (*a*). As to what statutes are public, what private, see *Arch. Pl. & Ev.* 391.

Records of the Queen's courts, are proved by examined copies (*b*). In what cases a former verdict or judgment is evidence, and for or against whom, see *Arch. Pl. & Ev.* 393, 394. In what cases the nisi prius record is evidence, *Id.* 392. A judgment of the House of Lords, a record of an indictment, and a conviction before a magistrate, are likewise proved by examined copies (*c*). So is a writ, if it be returned; but if it be not, it must be produced (*d*).

A fine is proved by the chirograph (*e*); a recovery, by an examined copy or an exemplification, usually the latter (*f*).

Proceedings in parliament are proved by examined copies (*g*); so are the proceedings in courts of equity, (bill, answer, depositions, and decree,) (*h*) proceedings in the Ecclesiastical courts (*i*), and proceedings in the Admiralty court (*k*).

Proceedings in courts of law, not being records:—rules of court are proved by office copies (*l*); a judge's order, by producing the order and proving the judge's signature, or by producing an office copy of a rule by which it has been made a rule of court (*m*).

Commissions of bankrupt, adjudications, assignments and certificates, before the late Bankrupt Court Act (1 & 2 W. 4, c. 56), and fiats in bankruptcy, adjudications, appointments of assignees and certificates since that Act, are proved by producing them, first having them duly enrolled at the Bankrupt office, and a certificate of the enrolment indorsed thereon (*n*).

Proceedings in the Insolvent court, (petition, schedule, order of adjudication, &c.) may be proved by an office copy, purporting to be signed by the officer in whose custody the proceedings are, and to be sealed with the seal of the court, without other proof (*o*).

Proceedings in foreign courts are proved usually by exemplifications under the seal of the court (*p*).

Registers of baptism, marriage, or burial, are proved by examined copies (*q*).

A deed is proved by the attesting witness, if he be alive, in this country, and can be found; and if not, then by proof of his handwriting (*r*). A deed thirty years old, however, proves

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(*a*) Arch. Pl. & Ev. 388—390.
(*b*) Id. 390.
(*c*) Id. 395.
(*d*) Id. 394.
(*e*) Id. 395.
(*f*) Id. 396.
(*g*) Id.
(*h*) Id. 397—399.
(*i*) Id. 401.
(*k*) Id. 402.
(*l*) Id. 400.
(*m*) Id.
(*n*) 6 G. 4, c. 16, s. 96; 2 W. 4, c. 114, s. 9.
(*o*) 1 & 2 Vict. c. 110, s. 105.
(*p*) Arch. Pl. & Ev. 406.
(*q*) Id. 409, 410.
(*r*) Id. 418—423.

itself (*w*); and a deed enrolled, is proved, not by the subscribing witness, but by the certificate of enrolment indorsed on it (*x*). Care must be taken that the deed be properly stamped, otherwise it cannot be received in evidence (*y*).

A will of freehold land must be produced, and proved by one at least of the witnesses to it, who must at the same time be prepared to prove every circumstance attending the attestation required by the statute of frauds, 29 *C.* 2, *c.* 3, *s.* 5, and stat. 7 *W.* 4, and 1 *Vict. c.* 26 (*z*). A will of personal property is proved by the probate (*a*).

All written instruments not under seal, (agreements, bills of exchange, promissory notes, &c.) are proved by the attesting witness, if there be one; otherwise by proof of the party's handwriting (*b*).

Copies.] An examined copy is thus obtained: bespeak a copy from the officer who has the custody of the record, &c.; and when it is ready, let him read over the original, whilst you examine the copy. It is not necessary that he should also read over the copy whilst you examine the record (*c*). Then make a short memorandum on the back of it, as to the time when you examined it, in order that you may be able to swear to it afterwards (*d*).

An office copy (that is, a copy made out by the officer in whose hands the original document is, without being examined,) is only evidence in those cases, where by statute, or by the practice of the court, &c., it is his duty to make out copies for the parties, such for instance as an office copy of a rule of court, or the chirograph of a fine, &c.—in which case the copy may be given in evidence without further proof; but if it in strictness form no part of the officer's duties to make out such copies, although in fact he do make them for the convenience of parties and their solicitors, such copies are no evidence, unless proved to have been examined with the originals (*e*). Such a copy, issued by a court abroad, is clearly not evidence (*f*).

2. *Secondary Evidence.*

In what cases.] Where the best evidence cannot be produced,—where it is destroyed, or where it is lost, or upon a

(*w*) Arch. Pl. & Ev. 420.
(*x*) Id. 419, 396.
(*y*) See Id. 425—431; 55 G. 3, c. 184, & sch.
(*z*) See Arch. N. P. Vol. 2, pp. 375, 379.
(*a*) Arch. Pl. & Ev. 401.
(*b*) Id. 434.
(*c*) *Rolf* v. *Dart*, 2 Taunt. 470.
(*d*) 1 Arch. N. P. 19.
(*e*) Gilb. Ev. 23. Arch. Pl. & Ev. 391.
(*f*) See *Brown* v. *Thornton*, 6 Ad. & El. 185. 1 Arch. N. P. 19.

diligent search it cannot be found, or where it is in possession of the opposite party, and upon notice given to him to produce it at the trial he refuses to do so,—the party is allowed to give secondary evidence, that is to say, he may give any other evidence of the fact to be proved, which will satisfy the judge or jury of the truth of it (*g*).

But if the original instrument required a stamp, and it appear from the evidence that it was not stamped, no secondary evidence can be given of it (*h*): no evidence can be given of the matter of agreement, &c. because it was reduced to writing; nor of the written instrument, because if the instrument itself were produced, it could not be received in evidence for want of a stamp (*i*). And the like in all other cases, where the original instrument would not be admissible in evidence, if produced (*k*).

3. *Notice to Produce.*

In what cases.] If you wish to prove a document, which is in the hands of the opposite party, or of his agent or deputy (*l*), or of his banker (*m*), you may give him or his attorney notice to produce it; and if when called upon at the trial, he refuse to produce it, you may give secondary evidence of its contents (*n*).

But it is not necessary to give a notice to produce a notice, such as notice of dishonour of a bill (*o*), notice of assignment (*p*), or even a notice to quit (*q*), unless perhaps where it is attested by a witness, and then it must be proved by the subscribing witness, as in ordinary cases. Also, in an action on an attorney's bill, it is not necessary to give a notice to produce the bill delivered, but the production and proof of a duplicate or examined copy will be sufficient (*r*); the attorney's books however are not evidence (*s*). Also, in an action against a constable, the demand of a copy of the warrant may be proved by a copy or duplicate, without giving notice to produce

(*g*) See *Doe* v. *Ross*, 7 Mees. & W. 102. 1 Arch. N. P. 21.

(*h*) *R.* v. *Castle Morton*, 3 B. & A. 588. *Rippiner* v. *Wright*, 2 Id. 478.

(*i*) Id.

(*k*) 1 Arch. N. P. 22.

(*l*) *Baldney* v. *Ritchie*, 1 Stark. 338. *Sinclair* v. *Stevenson*, 2 Bing. 514, 1 Car. & P. 582. *Taplin* v. *Atty*, 3 Bing. 164.

(*m*) *Partridge* v. *Coates*, Ry. & M. 156. *Burton* v. *Payne*, 2 Car. & P. 520.

(*n*) 1 Arch. N. P. 22.

(*o*) *Ackland* v. *Pearce*, 2 Camp. 601. *King* v. *Beaumont*, 3 Br. & B. 288. *Swain* v. *Lewis*, 2 Cr. M. & R. 261.

(*p*) *Surtees* v. *Hubbard*, 4 Esp. 203.

(*q*) Per Ld. Ellenborough, C. J. 2 Camp. 111. Per Le Blanc, J. Id. 601.

(*r*) *Collins* v. *Trewick*, 6 B. & C. 394. *Anderson* v. *May*, 2 B. & P. 237. *Phillipson* v. *Chase*, 2 Camp. 101.

(*s*) *Phillipson* v. *Chase*, 2 Camp. 110.

the demand itself (*t*). And lastly, in trover for a written instrument, the nature of the instrument may be proved, without giving notice to produce the original (*u*).

Form of it.] The following may be the form of the notice:—

No. —. *In the county court of* ——, *at* ——.
Between A. B., plaintiff,
and
C. D., defendant.

Take notice that you are hereby required to produce to the court and jury, on the trial of this cause, [*a certain deed made between,* &c., *and dated,* &c., describing the instrument,] *and all other letters, books, papers and writings, whatsoever relating to the matters in question in this cause. Dated this,* &c.

Yours, &c.
C. D. [*defendant.*]

To Mr. A. B. [*plaintiff.*]

When and how served.] This notice must be served such a reasonable time before the trial, as will allow of the party's searching for or procuring it, for the purpose of producing it (*w*).

Proof of it, &c.] The party who has given the notice, may at the trial call for the instrument or not at his option. If he call for it, and it be produced, he may give it in evidence (*x*), subject of course to objection for interlineation or other defect appearing on the face of it, or that it is not legal evidence in the cause; and if it be handed to his counsel, and his counsel inspect it, he must give it in evidence, if it be material to the issue, but not otherwise (*y*). So, where notice is given to a party to produce his books, and they are called for at the trial, and he produces them; if the counsel for the other party inspect them, he thereby makes them evidence; he has not the option to use them or not (*z*). If on the other hand, the party refuse to produce the instrument when called for, the only effect is, that it enables the other party to give parol or other secondary evidence of it (*a*). To entitle him, however, to give such secondary evidence, he must if required, prove the

(*t*) *Long* v. *Orchard*, 2 B. & P. 39.

(*u*) *Bucher* v. *Jarratt*, 3 B. & P. 148. *How et al.* v. *Hall*, 14 East. 274. Per Gibbs, J. in *Scott et al.* v. *Jones*, 4 Taunt. 868. 1 Arch. N. P. 23.

(*w*) *Sims* v. *Kitchen*, 5 Esp. 46. *Houseman* v. *Roberts*, 5 Car. & P. 394. *Hargest* v. *Fothergill*, Id. 303. 1 Arch. N. P. 23.

(*x*) See *Reardon* v. *Winter*, 12 Law J. 139, *cp.*

(*y*) *Wilson* v. *Bowie*, 1 Car. & P. 10.

(*z*) *Wharam* v. *Routledge*, 5 Esp. 235.

(*a*) *Attorney Gen.* v. *Le Marchant*, 2 T. R. 201, *n.* *Cooper* v. *Gibbons*, 3 Camp. 363.

notice; and it is also necessary that it should appear, either expressly, or impliedly from circumstances, that the instrument was at the time of the notice in the possession or under the control of the person required to produce it. Where for instance a man sold a horse under a written warranty of soundness, of which warranty his son afterwards fraudulently obtained possession,—in an action against the father on the warranty, it was holden that although notice had been given to him by the plaintiff to produce it, and it was called for, and not produced, yet that no secondary evidence could be given of it, without first proving that the son acted as an agent for his father in the transaction (*b*). So, where a notice was given to produce a letter, which had been in the defendant's possession, but was filed in the court of Chancery in pursuance of an order of that court, and at the trial, upon the defendant's not producing it when called for, the plaintiff proposed to give secondary evidence of its contents: Abbott, C. J., held that this could not be done, the letter being as much in the possession of one party as the other; either party, upon application to the court of Chancery, might have obtained permission to produce it (*c*). So, where the document required was in the hands of a stakeholder for a party to the cause and a third person, a notice to the party to produce was holden not to entitle the other party to give secondary evidence of it (*d*). On the other hand, where a letter is sent to a person, and he returns an answer to it, the presumption is that it still remains in his possession (*e*).

After refusing to produce an instrument or document upon notice, the party so refusing will not be allowed to make use of it in any manner, in any subsequent stage of the trial (*f*).

4. *Witnesses, their Competency.*

Persons deemed incompetent as witnesses are—those who do not appear to have sufficient discretion; those who do not appear to have a right sense of the sanctity and moral obligation of an oath; and lastly, the counsel and solicitors of the parties, in some instances (*g*).

Incompetency from want of discretion.] An idiot shall not be allowed to give evidence (*h*); nor a lunatic (*i*), unless during a lucid interval (*k*); nor a person who is deaf, dumb and blind.

(*b*) 1 Car. & P. 692.
(*c*) *Williams* v. *Munnings*, Ry. & M. 18.
(*d*) *Parry* v. *May*, 1 Moody & R. 279.
(*e*) 1 Arch. N. P. 25.
(*f*) *Doe* v. *Cockell*, 6 Car. & P. 525. *Doe* v. *Hodgson*, 12 Ad. & El. 135. 1 Arch. N. P. 25.
(*g*) 1 Arch. N. P. 25.
(*h*) Co. Lit. 6 b. Gilb. Ev. 144.
(*i*) Id.
(*k*) Com. Dig. Testm. A. 1.

But a person who is deaf and dumb, merely, is not incompetent; and he may be examined through the medium of a sworn interpreter, who understands his signs (*l*). So, an infant of any age may be a witness, even in criminal cases, provided such infant appear sufficiently to understand the nature and moral obligation of an oath (*m*).

Incompetency from want of religion.] It is not necessary that a witness should be a Christian, or even believe in the Old Testament, as laid down in some of the older authorities (*n*); it is sufficient if he believe in a God, in a future state of rewards and punishments, and in the moral obligation of the oath he is about to take (*o*). Thus, Christians of all sects and denominations (*p*), Jews (*q*), Turks, Moors and other Mosliminn (*r*), Gentoos (*s*), and the like, may be witnesses. But a man wholly without religion, and having no belief in the moral obligation of an oath, shall not be received to give evidence in any case whatever (*t*).

Not incompetent from infamy or interest.] By stat. 6 & 7 Vict. c. 85, s. 1, it is enacted that no person, offered as a witness, shall thereafter be excluded, by reason of incapacity from crime or interest, from giving evidence, either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question or on any inquiry arising in any suit, action or proceeding, civil or criminal, in any court, or before any judge, jury, sheriff, coroner, magistrate, officer or person having, by law or by consent of parties, authority to hear, receive and examine evidence; but that every person so offered may and shall be admitted to give evidence on oath, or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question or inquiry, or of the suit, action or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence.

And by stat. 9 & 10 Vict. c. 95, s. 83, on the hearing or trial of any action, or on any other proceeding under this Act,

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(*l*) *R.* v. *Pollock*, MS. 1814.

(*m*) Leach, 180, 104. See 2 Hale, 278, 284. Com. Dig. Testm. A. 1. 2 Str. 700. Gilb. Ev. 144. 1 Arch. N. P. 25.

(*n*) See Co. Lit. 6 b. Gilb. Ev. 142, 143.

(*o*) Willes, 538. 1 Atk. 19, 21. 1 Wils. 84. Bul. N. P. 292. Peake, 11.

(*p*) See Leach, 319. Peake, 11, 28, 155.

(*q*) Gilb. Ev. 143. 2 Str. 821.

(*r*) See 2 Str. 1104.

(*s*) Willes, 531. 1 Atk. 19, 21.

(*t*) 1 Atk. 44. 1 Arch. N. P. 25, 26.

the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or upon solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court; and if he wilfully and corruptly give false evidence, he shall be deemed guilty of perjury (*u*).

As to the privilege of counsel and attornies, of not being obliged, or indeed allowed, to give evidence against their clients, see *Arch. Pl. & Ev.* 474.

5. *Attendance of Witnesses.*

Summons.] Either of the parties to the suit, or other proceeding under this Act, may obtain, at the office of the clerk of the court, summonses to witnesses, with or without a clause requiring the production of books, deeds, papers and writings in their possession or control; and in any such summons, any number of names may be inserted (*w*). This latter provision seems superfluous: for the statute makes no provision for the service of a copy of the summons; on the contrary, the summons itself must be served, otherwise the witness is not bound to obey it. It seems to be useless therefore to include any other name in the summons, than that of the witness upon whom it is to be served.

The following is the form of a

Summons to a Witness.

No. —. In the county court of ——, at ——.
(Seal.) *Between A. B., plaintiff,*
and
C. D., defendant.

You are hereby required to attend at [the court house] *at ——, on —— the —— day of ——, at the hour of ——, to give evidence in the above cause on behalf of the above-named ——* [*and then and there to have and produce* (state any particular documents required) *and all other books, papers, writings, and other documents relating to the said action, which may be in your custody, possession, or power*]. *In default of your attendance you will be liable to a penalty of* 10*l. under the statute of* 9 *&* 10 *Vict. c.* 95.

Given under the seal of the court, this —— day of ——, 18—.
——, Clerk of the said court.

To ——, of ——.

(*u*) Stat. s. 84. (*w*) Stat. s. 85.

These summonses must be served by one of the bailiffs of the court (*y*).

Penalty for disobeying it.] Every person on whom any such summons shall be served, either personally, or in such other manner as shall be directed by the general rules or practice of the court [that is, in the manner in which a summons to appear is to be served, (*z*)], and to whom at the same time payment or a tender of payment of his expenses shall be made on such scale of allowance as shall be settled by the rules of practice of the court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers or writings required by such summons to be produced,—and also every person present in court, who shall be required to give evidence, and who shall refuse to be sworn and give evidence,—shall forfeit and pay such fine, not exceeding 10*l.*, as the judge shall set upon him; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the court in which the fine was imposed (*a*).

The following is the

Form of the Order.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas it has been made to appear to the court, that E. F. of ——, *was duly summoned to be and appear as a witness in this action, at a county court at* ——, *on* —— *the* —— *day of* ——, [*and also to produce,* as the case may be], *and that payment* [or *a tender of payment*] *of his reasonable expenses, was duly made to him the said E. F.: And whereas the said E. F. did not appear, &c., on, &c., in obedience to the said summons* [or *having appeared in pursuance of the said summons, did wilfully refuse to be sworn and to give evidence in the said action* (or *to produce such, &c.*)]:

Now the said court doth hereby order that the said E. F. shall pay a fine of £—— *for such neglect* [or *refusal*] *to the clerk of this court, on or before the* —— *day of* ——, [or *forthwith*]; *and that the sum of £*——, *part of the said fine, shall be paid*

(*y*) Stat. s. 85. (*z*) See Rule 14, *ante*, p. 30. (*a*) Stat. s. 86.

by the said clerk to the —— in this action, being the party injured by such neglect [or *refusal*] *of the said E. F.*

Given under the seal of the court, this —— day of ——, 18—.

By the court.

——, *Clerk.*

And payment of any fine, imposed by any court under the authority of this Act, may be enforced, upon the order of the judge, in like manner as payment of any debt adjudged in the said court; and it shall be accounted for as herein provided (*b*).

Allowance to witnesses.] The following are the allowances to witnesses, sanctioned by the rules of court.

	s.	*d.*
Gentlemen, merchants, bankers, and professional men	7	6
Tradesmen, auctioneers, accountants, clerks, and yeomen	5	0
Journeymen, labourers, and the like	2	0
Travelling expenses per mile, one way	0	6

6. *Examination and Cross-examination of Witnesses.*

The examination of witnesses, in ordinary cases, is vivâ voce in court. And if the witness be a foreigner, not understanding or speaking English, he is examined through the medium of an interpreter, sworn for the occasion. So, where a witness is deaf and dumb, he may be examined through the medium of a sworn interpreter, who understands his signs (*c*); or if he can write, it will be more satisfactory that the questions should be reduced to writing and shown to him, and that he should give his answers in writing also (*d*).

Examination upon the voire dire.] When a witness appears to give evidence, the first thing the opposing counsel has to consider is, whether he is a competent witness. And in all cases of incompetency, the opposite party is allowed to ascertain the fact, by an examination of the witness himself, upon the *voire dire*, before he is examined in the cause. It is technically termed an examination on the *voire dire* (*veritatem dicere*), because the witness, instead of being sworn in the cause, is merely sworn that he shall true answers make to such questions as shall be demanded of him; and if, upon examination, he appear to be incompetent, he is not sworn or examined in the cause; but if competent, he is then sworn in the cause and examined in the ordinary way. But although the examination in such a case should in strictness be upon the *voire dire*,

(*b*) Stat. s. 87.
(*c*) *R.* v. *Pollock*, MS. 1814.
(*d*) *Morrison* v. *Leonard*, 3 Car. & P. 127. 1 Arch. N. P. 33.

and in prudence it is desirable in most cases that it should be so, yet in practice you are allowed to put questions to a witness with relation to his competency, after he is sworn in the action, and even during the cross-examination; and indeed if the incompetency of a witness is discovered at any time during the trial, his evidence will be struck out (*e*).

But in case of incompetency from want of religion (*see ante*, p. 43), it is the better and more approved method to question the witness upon the subject before he is sworn at all (*f*).

In an examination on the *voire dire*, there is this anomaly, that the witness may be required to give parol evidence of the contents of a written instrument, although it do not appear to have been destroyed or lost, and no notice have been given to produce it; and on the other hand, if upon such an examination an apparent incompetency be made out, the party who called the witness may re-examine him, to show that by a written instrument his competency has been restored, without producing or otherwise proving it. This is allowed from necessity: for the party objecting to the witness is not supposed to know that such witness will be produced against him; and the party who calls the witness may not know that the particular objection will be made to him. A familiar instance of this is, where a witness, by being a bankrupt, would be incompetent, unless he had also obtained his certificate,—there the party seeking to establish his incompetency is allowed to ask him whether he has been a bankrupt, although in ordinary cases the proper mode of proving this would be by producing the fiat and adjudication; and if the answer be in the affirmative, the party calling him may ask him if he have not obtained his certificate, without producing it (*g*). And where a bankrupt stated on the *voire dire* that he had obtained his certificate and released to his assignees, Parke, J. held him competent, without production of either certificate or release (*h*). But where a witness, upon examination on the *voire dire*, acknowledged that he had entered into an agreement, the effect of which was to render him incompetent, and the agreement (which was in writing) was thereupon produced by him: the party who called him wished the instrument to be read; and Abbott, C. J. held, that as the witness had produced the instrument upon which the objection to his competency rested, it should be read (*i*).

Examination in chief.] In the examination of a witness, the first rule to be attended to is, that the questions be relative to

(*e*) Per Grose, J. in *Turner* v. *Pearte*, 1 T. R. 720. *Jacobs* v. *Layborn*, 12 Law J. 427. ex., 11 Mees. & W. 685. 1 Arch. N. P. 33, 34.

(*f*) 1 Arch. N. P. 34.

(*g*) *Wandless* v. *Caxthorne*, Moo. & M. 321, n.

(*h*) 1 Car. & P. 234.

(*i*) *Butler et al.* v. *Carver et al.*, 2 Stark. 433. 1 Arch. N. P .34.

the matter in issue. If this be not attended to, the examination will be rambling and uncertain, and likely to confuse and perplex the judge or jury, from the very circumstance of its comprising irrelevant matter. Besides, the court have a right to prevent any questions being put, which do not tend to the proof of the issue (*k*).

Secondly, no leading question, or, in other words, no question which in itself suggests the answer required to it, should be put, in the direct examination of a witness, upon any point at all material to the issue. You will be allowed to lead him upon immaterial matter, which is merely introductory; but as soon as you reach the material part of the examination, all leading questions must be carefully avoided. There are instances, however, in which this cannot be avoided. For instance, where a witness, upon his cross-examination, being asked if he made use of certain words to J. S., denies it, and J. S. is afterwards called to contradict him, the very words may be repeated to J. S., and he may be asked whether the former witness did not make use of them to him (*l*); for if you merely asked J. S. what the witness had said to him, it might be impossible ever to come to a direct contradiction. So, if you wish a witness to identify a particular person present in court, you may point the party out to him, and ask him if that be not the person (*m*). And formerly, when a witness showed himself decidedly adverse to the party calling him, the judge, upon application, always allowed the party to examine him after the manner of a cross-examination, asking leading questions, &c.; and in the case of an issue out of Chancery, where the defendant, by an order of that court, was examined as a witness for the plaintiff, Best, C. J. held, that as the witness stood in a situation which of necessity made him adverse to the plaintiff, the counsel for the plaintiff might cross-examine him as a matter of right (*n*). And in a similar case, where such a cross-examination of an adverse witness was objected to, but allowed, Abbott, C. J. said, I mean to decide this and no further, that in each particular case there must be some discretion in the presiding judge as to the mode in which the examination shall be conducted, in order best to answer the purposes of justice (*o*). However, at present the judges are not generally inclined to allow of such indulgence in the examination of adverse witnesses; and the propriety of it seems to be doubted (*p*).

Thirdly, a witness should not be examined, nor should he be allowed to give evidence, as to any matter which he does not know of his own knowledge; except in cases where hearsay

(*k*) 1 Arch. N. P. 34.
(*l*) 3 Stark. 7, and see *Courtern* v. *Towse*, 1 Camp. 43.
(*m*) 2 Stark. 128.
(*n*) *Clarke* v. *Saffery*, Ry. & M. 126.
(*o*) *Boston* v. *Carew*, Ry. & M. 127.
(*p*) 1 Arch. N. P. 35.

evidence is receivable; and except also in a matter of science, when a person intimately acquainted with it may be examined as to his opinion of the probable result or consequence from certain facts already proved by others (*q*).

The witness is allowed to refresh his memory, by a reference to any memorandum or entry, made by himself, at a time when the transaction was fresh in his recollection (*r*). And where an agent, who had given a receipt for money, afterwards became blind, the receipt, though unstamped, was allowed to be read to him in court, for the purpose of refreshing his memory (*s*). Also where, upon the examination of a captain of a ship, the log-book was laid before him for the purpose of refreshing his recollection; and being asked if he had written it himself, he answered that he had not, but that from time to time he examined the entries in it whilst the occurrences therein mentioned were recent and fresh in his recollection, and that he always found the entries to be correct: Lord Ellenborough, C. J. held this to be the same, for the purpose of refreshing the witness's memory, as if the entries had been written by himself (*t*). So, where a clerk to a tradesman entered the transactions in trade daily in the waste book from his own knowledge, and the tradesman copied the entries daily into the ledger, in the presence of the clerk, who checked them as they were copied; in an action brought by the tradesman for goods sold and delivered, it was holden that the clerk might use the entries in the ledger, for the purpose of refreshing his memory, although the waste book was not produced nor its absence accounted for, the entries in the ledger being in the nature of entries made by the clerk himself (*u*). This use of such a memorandum, however, must be understood as allowed merely to aid the memory of the witness; for if he have no recollection of the fact stated in it, except from his finding it entered there, he cannot be allowed to give evidence of it (*w*). But where an entry in a book stated a payment of a sum of 20*l.* to J. S., and was signed by J. S. with his initials, and upon J. S. appearing as a witness to prove the receipt of this 20*l.*, and the book being put into his hands for the purpose of refreshing his memory, he said, "I have no recollection that I received the money; I know nothing but by the book; but seeing my initials, I have no doubt that I received the money;" the court held this to be sufficient; and Bayley, J. remarked that where a witness, called to prove the execution

(*q*) See Arch. Pl. & Ev. 449. 1 Arch. N. P. 35.

(*r*) Per Lord Ellenborough, C. J. in *Kensington* v. *Inglis*, 8 East, 289.

(*s*) *Catt* v. *Howard*, 3 Stark. R. 3.

(*t*) *Burrough* v. *Martin*, 2 Camp. 112.

(*u*) *Burton* v. *Plummer*, 2 Ad. & El. 341.

(*w*) *Doe* v. *Perkins*, 3 T. R. 749. Id. 754, cit.

of a deed, sees his signature to the attestation, and says that he is therefore sure that he saw the party execute the deed, that is a sufficient proof of the execution, though the witness add that he has no recollection of the fact (*x*). But where a witness sought to refresh his memory, not from the memorandum which he had originally made, but by a copy of it made by himself six months afterwards; Best, C. J. held that it could not legally be done, that for such a purpose he could only look at the original memorandum made near the time (*y*). Where counsel put a paper into the witness's hands, for the purpose of refreshing his memory, the opposite counsel has a right to see it, and may cross-examine or re-examine upon it (*z*). So where a witness looked at an entry in a book, for the purpose of refreshing his memory as to the numbers of certain bank-notes, it was holden that the counsel for the opposite party might cross-examine him upon the whole of the entry (*a*).

If a witness gives evidence contrary to what the party calling him expects, the latter is not allowed to produce evidence to destroy the credit of such witness, so as to show generally that he is not to be believed upon his oath; but although he is not allowed thus to discredit his witness by general evidence, he is still at liberty to make out his case by other witnesses (*b*). Therefore where, in support of a plea of non-joinder, in order to prove a partnership between the defendant and S. B., the defendant called S. B. as a witness, who, to his surprise, proved that no partnership had existed; and the defendant thereupon put in evidence an answer of S. B. to a bill in equity, in which he swore to the existence of the partnership, and he also called witnesses to prove that S. B. was a partner: this evidence being objected to on the ground that the defendant was not at liberty to give evidence to contradict his own witness, the court held that the answer to the bill in equity was wrongly received in evidence, because it had the effect of throwing general discredit upon the testimony of the witness; but that the other witnesses were properly received to prove the partnership, for the testimony of the first witness being adverse, did not preclude the defendant from proving his case by other evidence (*c*). And where a witness gives evidence as to two facts, one for and the other against the party calling him, the party may call other witnesses to contradict him as to the latter fact, without repudiating his testimony as to the

(*x*) *Maugham* v. *Hubbard*, 8 B. & C. 14.

(*y*) *Jones* v. *Stroud*, 2 Car. & P. 196.

(*z*) *R.* v. *Ramsden*, 2 Car. & P. 603. *Sinclair* v. *Stevenson*, 1 Id. 582.

(*a*) *Lloyd* v. *Freshfield*, 2 Car. & P. 332, 325; and see *Gregory* v. *Tavernor*, 6 Id. 280. 1 Arch. N. P. 36, 37.

(*b*) Bul. N. P. 297. *Alexander* v. *Gibson*, 2 Camp. 555.

(*c*) *Ewer* v. *Ambrose*, 3 B. & C. 746.

former. And, therefore, where, in an action for a false return to a *fi. fa.*, the plaintiff called the sheriff's officer to prove the warrant, and he upon cross-examination, proved that there were no goods upon which the sheriff could have levied: the plaintiff offered then to prove by other witnesses that there were goods sufficient within the bailiwick; but the judge held that he could not do so without repudiating the whole of the evidence of the officer, which in that case must be struck out altogether, and the plaintiff therefore submitted to be nonsuit: the court afterwards, upon application, set aside the nonsuit, holding that the plaintiff's contradicting the witness upon one point was not a repudiation of his evidence altogether, but it was for the jury to say, under the circumstances of the case, what credit should be given to the witness on the one point and on the other (*d*).

At the commencement of the trial, or at any time during its progress, the judge, upon application, will order the witnesses on either or both sides out of court, in order that they may not hear the address of counsel, and that none of them may be examined in the presence or hearing of others who are to be examined or cross-examined after them. The attornies of the respective parties (*e*), and any witnesses who are to depose to matter of opinion, and not to facts, are never included in this order. If the witness do not withdraw when ordered, or if he afterwards come into court and be present during the examination of some other witness, in the Exchequer it seems that it is a peremptory rule that he cannot be admitted to give evidence (*f*), but in the other courts it is discretionary with the judge whether he will allow him to be examined or not (*g*).

Cross-examination.] A witness attending upon a *summons duces tecum*, and called merely for the purpose of producing a deed or other paper writing, need not be sworn if the party by whom he is called do not wish to examine him (*h*); and if not sworn, the other party has no right to cross-examine him. On the other hand, if a witness be called and sworn, although the party who calls him do not examine him, yet the opposite party has a right to cross-examine him if he will (*i*). But where the plaintiff's counsel, intending to call Captain Francis Stewart, called Captain Stewart, and a Captain Hugh Stewart appeared and was sworn, but after a few questions

(*d*) *Bradley* v. *Richards*, 8 Bing. 57. 1 Arch. N. P. 37.

(*e*) *Pomeroy* v. *Baddeley*, Ry. & M. 430.

(*f*) *Atty. Gen.* v. *Bulpit*, 9 Price, 4.

(*g*) *Parker* v. *M'William*, 6 Bing. 683, 1 Moody & M. 329. 1 Arch. N. P. 38.

(*h*) *Perry* v. *Gibson*, 1 Ad. & E. 48. *Davis* v. *Dale*, 1 Moody & M. 514.

(*i*) *Phillips* v. *Shf. of Middlesex*, 1 Esp. 357. *R.* v. *Brooke*, 2 Stark, 472.

the mistake was found out; the defendant's counsel then claimed the right to cross-examine him; but Lord Tenterden, C. J., held, that as he had been called by mistake, he could not be cross-examined (*k*).

Upon cross-examination, the witness may be asked leading questions. And the questions need not be confined to the subject of the examination; the party cross-examining may question the witness, not only as to all matters relevant to the issue, but as to collateral matter also, for the purpose of trying his credit. But if a question be put to him thus upon a subject which has no relevancy to the matter in issue, you must be satisfied with the witness's answer; you cannot afterwards call any witness to contradict him (*l*). If the question be relevant, it is otherwise (*m*).

The purpose of a cross-examination is either to impugn the credit of the witness, or to get him to explain or give a colour to what he has already stated in his examination in chief; so as to render it less unfavourable to the party cross-examining. You may cross-examine him, for the purpose of showing that he has no great respect for the moral obligation of the oath he has taken; or to show that, however he may design to speak the truth, his means of knowledge upon the subject of his evidence were so limited, he may possibly have been deceived in what he has asserted in his examination in chief; or to show that he is interested in the event of the cause, which although it do not affect his competency, may detract very much from his credit; or to show that he has been punished for offences, or otherwise so degraded, that no dependence can with safety be placed upon his testimony; or to impeach his veracity, by showing that he has at other times made declarations, by parol or in writing, or done acts, inconsistent with the evidence he has given upon his examination. And in this latter case you will not be allowed to impeach the testimony of the witness, by proving his former declarations or acts to the contrary, unless you first cross-examine him particularly as to his having made such declarations or done such acts (*n*). And this is now the general rule (*o*). Even if a witness, upon his examination as to the occurrence of a fact, answer that he does not remember it, the counsel on the opposite side cannot give evidence of a former declaration by the witness of the fact having occurred, unless he have in cross-examination questioned the witness as to such declaration; for the fact may have occurred, and the witness may

(*k*) *Clifford* v. *Hunter*, 3 Car. & P. 16.

(*l*) *Spencely* v. *De Willet*, 7 East, 108. *Harris* v. *Tippett*, 2 Camp. 637; and see *R.* v. *Clarke*, 2 Stark. 243, 244.

(*m*) 1 Arch. N. P. 38.

(*n*) *Queen's Case*, 2 Brod. & B. 311.

(*o*) *Carpenter* v. *Wall*, 11 Ad. & El. 803.

have formerly declared his knowledge of it, and yet he may not recollect it at the time of his examination (*p*). If a witness be asked whether he made a certain representation, the opposite counsel may interpose, and ask him whether the representation in question were by parol or in writing; for if the latter, the writing should be produced (*q*). If the declaration were by parol, it is not sufficient, in cross-examining the witness upon the subject, to ask him whether he has ever made such a statement, but you must also ask him as to time, place, and person involved in the supposed contradiction, so as to call his attention more particularly to the circumstance (*r*). If he admit having made the former declaration, of course no further evidence of it is necessary, nor will it be received. Even where a witness merely said that he had no recollection, one way or the other, of having made such declaration, without expressly denying it, and a witness was afterwards called, to prove that he had made it: Tindal, C. J., refused to receive the evidence, saying that he had never heard such evidence in contradiction, except where the witness had expressly denied the declaration (*s*). But if he expressly deny it, the opposite counsel may afterwards, as part of his evidence, call as a witness the person to whom the former witness made the declaration, may repeat the very words used by him in his question to the former witness, and ask him whether such witness did not make use of those expressions to him (*t*). If however the former declaration were in writing, as for instance, in a letter, you cannot state to the witness the contents of the letter, and then ask him if he ever wrote such a letter; but you should show him the letter, ask him if it be of his handwriting, and if he admit it then give the letter in evidence. Or you may show him a part of the letter, and ask him if he wrote that part; but if he do not admit that he wrote it, you cannot then proceed to cross-examine him as to the contents of the letter (*u*); nor, even if he admit it to be of his handwriting, can you question him whether statements, such as you suggest to him, are contained in the letter, but the entire letter must be given in evidence (*w*). If upon showing him the letter, he admit it to be of his handwriting, the ordinary course is to have the letter read as part of your evidence after you have opened your case. But if it become necessary to have the letter read, in order to found certain questions with relation to the contents of the letter, to be propounded to the witness, the court upon application will

(*p*) 2 Brod. & B. 279.
(*q*) Id. 292.
(*r*) *Angus* v. *Smith*, Moody & M. 473.
(*s*) *Pain* v. *Beeston et al.*, Moody & R. 20.
(*t*) 3 Stark. 7.
(*u*) *Queen's Case*, 2 Brod. & B. 286.
(*w*) Id. 288.

allow the letter to be read at the time of the cross-examination, subject of course to the consequences of the letter being considered as a part of your evidence (*x*). But where a witness was asked upon the *voire dire*, whether he was not liable to pay the costs of the action, and he answered in the negative, Parke, B. held that the counsel, who was examining him, might put into his hands a letter which he had written, and might then again ask him whether he was not liable to the attorney, without having the letter read, or making it any part of his evidence (*y*).

Besides this mode of impeaching the credit of a witness, by a cross-examination of himself, or by calling witnesses to contradict him, his character may also be impugned by calling witnesses acquainted with it, who may be asked generally whether, from what they know of his character, they would believe him upon his oath (*z*). And in a prosecution for a highway robbery, where in opening the case it was stated that particular facts would be proved by A. and B., Parke, J., allowed the prisoner's counsel, both before and after A. and B. were examined, to ask the other witnesses for the prosecution whether A. and B. were not persons of very bad character (*a*).

Re-examination.] If a witness be cross-examined, the party who called him has a right to re-examine him with respect to any statements made by him in his cross-examination, in order that he may explain them where necessary and practicable. And the questions put to the witness in re-examination, must be confined strictly to his statements in cross-examination, or to matter immediately arising out of them; no question can be put to him relative to new matter, not arising out of the cross-examination, and which ought, if at all, to have been asked during his direct examination, without the leave of the judge, and without giving the opposite counsel liberty to cross-examine upon it, if he will. In *The Queen's case*, the judges, in answer to a question put to them, stated that if a witness, upon his cross-examination, admit to his having used certain expressions in a conversation with a person not a party to the cause, the opposite counsel in re-examining the witness is confined to such questions as may elicit the meaning of the expressions and the motives of the witness for using them; but where a witness deposes to certain expressions being used by a party to the cause, the counsel for that party is entitled to cross-examine or re-examine the witness as to the whole of the conversation in which the expressions occurred, because

(*x*) 2 Brod. & B. 288.
(*y*) *Homan* v. *Thompson*, 6 Car. & P. 717. 1 Arch. N. P. 39, 40.
(*z*) 4 Esp. 102.
(*a*) 5 Car. & P. 600. 1 Arch. N. P. 40.

in such a case the expressions are given in evidence as an admission of the party, and the whole of the admission must be taken together (*b*).

Witnesses in reply.] If the defendant set up any defence, and give evidence in proof of it, the plaintiff may then call witnesses in reply. Their testimony however must be confined strictly to the defence, and the witnesses called in support of it: the plaintiff will not be allowed to wander out of it, and give any evidence in further support of his original case (*c*).

SECTION V.

Evidence for the Plaintiff and Defendant in the different Actions.

Before we enter upon this subject, it is necessary to premise, that no evidence shall be given by the plaintiff, on the trial of the cause, of any demand or cause of action not stated in the summons (*d*).

Also, in actions for sums exceeding 5*l.*, the plaintiff shall not be allowed to give evidence of any matter not stated in his particulars of demand (*e*); nor give evidence of any matter stated in them, which is not strictly comprised within the cause of action stated in the summons (*f*). The judge, indeed, in his discretion, and on such terms as he may think fit, may adjourn the cause at the hearing, to enable the plaintiff to deliver a statement of particulars or further particulars (*g*), if the plaintiff have not delivered any, or have delivered an imperfect statement: but he cannot allow of evidence being given of any matter not mentioned in the particulars delivered.

So, if the defendant give notice of set-off, and lodge with the clerk the particulars of his set-off, as directed, *ante*, p. 32, he shall not be allowed at the trial to give evidence of any debt or demand not stated in his particulars; nor, it should seem, of any claim stated in his particulars, which is not legally the subject of set-off in other courts of record, as the statute makes no alteration in the law in this respect, with reference to these county courts. As to the actions in which a set-off may be pleaded, in other courts of record, and the debts or demands which may legally be set-off, *see* 1 *Arch. N. P.* 194, *&c.*

I shall now proceed to state shortly the nature of the different personal actions, cognizable by these county courts, the

(*b*) 2 Brod. & B. 294. 1 Arch. N. P. 41.
(*c*) 1 Arch. N. P. 41.
(*d*) Stat. s. 75.
(*e*) 1 Arch. N. P. 14.
(*f*) Id. 15.
(*g*) Rule 2.

evidence required on the part of the plaintiff to sustain them, and the defences which may be set up to them,—referring the reader to my work on Nisi Prius, where he will find the subjects treated of at length. I propose to do this, under the following heads.

1. *Assumpsit.*

The action of assumpsit is the remedy assigned by law, for the breach of a contract not under seal (*e*). Such a contract consists of two parts, the consideration and the promise; without a consideration, the promise would be a nullity, and could not be enforced (*f*). This consideration is either an act done, or to be done,—or as it is usually expressed, it is either executed (*g*), or executory (*h*); and if executory, it is either a condition precedent, and must be executed before any action can be maintained upon the promise (*i*),—or the consideration and promise are conditions concurrent, that is to say, two acts which are to take place at the same time (*k*),—or they are mutual promises, that is to say, a promise on one part is the consideration of the promise on the other part, in which case a performance of the former promise is not necessary to enable the plaintiff to bring an action for a breach of the latter (*l*),—or they are conditions independent (*m*). The consideration, also, must be either of benefit to the defendant (*n*), or of detriment to the plaintiff (*o*); a forbearance to sue, is a good consideration (*p*); and a moral obligation is a good consideration for an express promise, though not for an implied one (*q*). The consideration, also, to be sufficient, must move from the plaintiff, that is to say, there must be privity of contract between the plaintiff and defendant; for if the plaintiff be a stranger to the consideration, he cannot maintain the action (*r*). And the consideration must be valuable (*s*), must not be illegal (*t*), or immoral (*u*), or fraudulent (*v*), or contrary to public policy (*w*).

To maintain assumpsit, of course there must be a promise, express or implied (*x*), absolute or conditional (*y*); if it be in the alternative, the party may perform one or other of the

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(*e*) 1 Arch. N. P. 57.
(*f*) Id. 60.
(*g*) Id. 61.
(*h*) Id. 63.
(*i*) Id. 63.
(*k*) Id. 65.
(*l*) Id. 67.
(*m*) Id. 68.
(*n*) Id. 71.
(*o*) Id. 73.
(*p*) 1 Arch. N. P. 74.
(*q*) Id. 77.
(*r*) Id. 79.
(*s*) Id. 83.
(*t*) Id. 85.
(*u*) Id. 90.
(*v*) Id. 91.
(*w*) Id. 92.
(*x*) Id. 96, 97.
(*y*) Id. 101.

things promised, at his option, unless otherwise expressly stipulated for in the agreement (*z*). And the promise must not be illegal (*a*), or fraudulent, or fraudulently obtained (*b*), or against public policy (*c*), or in restraint of trade (*d*).

Evidence for the plaintiff.] To maintain the action, the plaintiff, in the case of an express contract, must prove the consideration, the promise, the breach, and the damages; in the case of an implied contract, he must prove the facts from which the contract or promise is implied by law, the breach and the damages (*e*).

There are some cases in which, by the statute of frauds (29 C. 2, c. 3), a contract to be valid must be in writing (*f*). By sec. 4, "no action shall be brought, whereby to charge any executor or administrator, upon any special promise to answer damages out of his own estate (*g*);—or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person (*h*)—or to charge any person upon any agreement made upon consideration of marriage, (which relates, however, only to contracts in consideration of marriage, and not to mutual promises to marry) (*i*);—or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them (*k*);—or upon any agreement that is not to be performed within the space of one year from the making thereof, (which however does not extend to agreements which may by possibility be performed within a year) (*l*):—unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." Also, by sec. 17 of the same statute, "no contract for the sale of any goods, wares, or merchandizes, for the price of 10*l.* sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized" (*m*). Letters passing between the parties, and signed by them, if they amount to a contract, are of course a compliance with the statute (*n*).

Contracts generally, not relating to the sale of goods,

(*z*) 1 Arch. N. P. 101.
(*a*) Id. 101.
(*b*) Id. 102.
(*c*) Id. 103.
(*d*) Id. 103.
(*e*) Id. 142, 143.
(*f*) Id. 104.
(*g*) 1 Arch. N. P. 107.
(*h*) Id. 108.
(*i*) Id. 110.
(*k*) Id. 110.
(*l*) Id. 113, 114.
(*m*) Id. 114.
(*n*) Id. 105.

require to be stamped; and if not stamped, they cannot be given in evidence (*o*).

Defence.] The defendant may dispute and disprove every thing which the plaintiff is bound to prove,—the consideration, the promise, the breach, the damages; he may object that the contract is not in writing and signed by him or his agent, if it be a contract within the statute of frauds above-mentioned; or, he may object to the contract being read, if by law it require a stamp, and be not stamped.

If he give notice of his defence, he may give evidence of a set off (*p*),—or that he was an infant under the age of twenty-one years at the time of the making of the contract (*q*),—or that after breach of the contract, and before the commencement of the suit, he was a bankrupt and obtained his certificate (*r*), or was discharged under an Act for the relief of insolvent debtors (*s*), in cases where a certificate of bankrupt or discharge is a bar to the action;—or he may show that the action is barred by the statute of limitations (*t*); or if the defendant be a woman, she may also prove that she was, at the time of the contract, a married woman (*u*).

And although the defendant give no notice of his defence, he may give in evidence an accord and satisfaction (*v*),—or another agreement substituted for that sued upon (*w*),—that the matter of the action was referred to arbitration, and an award made (*x*),—or that the plaintiff since the contract has become bankrupt (*y*), or been discharged under an Insolvent Act (*z*),—or that the promise was obtained by fraud and covin (*a*),—or that the consideration or promise is illegal, immoral, or contrary to public policy (*b*),—or that the plaintiff has already obtained judgment against him for the same cause of action (*c*),—or that he the defendant has paid the debt (*d*),—or tendered it before action brought, (*e*),—or has obtained a release (*f*).

2. *Actions upon Bills of Exchange or Promissory Notes.*

Evidence for the Plaintiff.] In an action on a bill of exchange, by the drawer against the acceptor,—produce the

(*o*) 1 Arch. N. P. 119.
(*p*) Id. 198.
(*q*) Id. 162.
(*r*) Id. 155.
(*s*) Id. 167.
(*t*) Id. 202.
(*u*) Id. 159.
(*v*) Id. 148.
(*w*) Id. 154.
(*x*) 1 Arch. N. P. 154.
(*y*) Id. 156.
(*z*) Id. 171.
(*a*) Id. 159.
(*b*) Id. 161.
(*c*) Id. 173.
(*d*) Id. 178.
(*e*) Id. 216.
(*f*) Id. 190.

bill (*g*), properly stamped, and prove the defendant's handwriting to the acceptance (*h*).

In an action by payee against the acceptor,—produce the bill, properly stamped, and prove the acceptance; it is not necessary to prove the drawing (*i*).

In an action by indorsee against the acceptor,—produce the bill, properly stamped, and prove the acceptance (*k*), the indorsement of the payee (*l*), and the other indorsements if required (*m*).

In an action by payee against drawer, for non-payment,—produce the bill, properly stamped, and prove the drawer's handwriting (*n*), presentment for payment, and that it was not paid (*o*), and notice of dishonour to the defendant (*p*).

In an action by payee against drawer, for non-acceptance,—produce the bill, properly stamped, and prove the drawing, the presentment for acceptance (*q*), and the notice of non-acceptance to the defendant (*r*).

In an action by indorsee against drawer, for non-payment,—produce the bill, properly stamped, and prove the drawing (*s*), the indorsements (*t*), the acceptance (*u*), the presentment (*v*), and notice of dishonour (*w*).

In an action by indorsee against drawer for non-acceptance,—produce the bill properly stamped, and prove the drawing, indorsements, presentment for acceptance, and the notice of non-acceptance to the defendant (*x*).

In an action by indorsee against indorser for non-payment,—produce the bill properly stamped, and prove the indorsement of the defendant, and the subsequent indorsements if necessary, but not any previous indorsement (*y*),—the acceptance, or that it was on the bill when the defendant indorsed it (*z*), the presentment to the acceptor for payment (*a*), and notice of dishonour (*b*).

In an action by indorsee against indorser for non-acceptance,—produce the bill, properly stamped, and prove the indorsement, the presentment for acceptance, and notice of non-acceptance to the defendant (*c*).

In an action on a promissory note by payee against maker,—produce the note, properly stamped, and prove the defendant's handwriting to it (*d*).

(*g*) 2 Arch. N. P. 5.
(*h*) Id. 6.
(*i*) Id. 37.
(*k*) Id. 40.
(*l*) Id. 41.
(*m*) Id. 41—46.
(*n*) Id. 63.
(*o*) Id. 65.
(*p*) Id. 67—80.
(*q*) Id. 83—86.
(*r*) Id. 86.
(*s*) Id. 89.
(*t*) 1 Arch. N. P. 89.
(*u*) Id. 90.
(*v*) Id. 90.
(*w*) Id. 90.
(*x*) Id. 93, 94.
(*y*) Id. 95.
(*z*) Id. 95, 96.
(*a*) Id. 96.
(*b*) Id. 96.
(*c*) Id. 100.
(*d*) Id. 112.

In an action by indorsee against maker,—produce the note, properly stamped, and prove the making and the indorsement (*e*).

In an action by indorsee against indorser,—produce the note, properly stamped, and prove the indorsements (*f*), the presentment to the maker for payment (*g*), and notice of dishonour to the defendant.

In an action by holder against drawer of a cheque upon a banker,—produce the cheque, and prove the defendant's handwriting to it (*h*), prove presentment (*i*), and notice of dishonour (*k*).

Defence.] In all these cases, the defendant may dispute and disprove everything the plaintiff is bound to prove: he may prove that the signatures purporting to be those of himself and of parties subsequent to him, are forgeries (*l*), that the name was signed by some person without authority (*m*); he can object to the bill or note being given in evidence, on the ground of its being wrongly stamped (*n*), he can object that it is not in law a bill or note (*o*).

He can prove that the bill has been altered without his assent, or after it was negotiated (*p*); or that it was stolen or lost, and that the plaintiff knew of the fact at the time he received it, or took it without proper caution (*q*).

He may prove that he drew, or accepted, or indorsed the bill, or made or indorsed the note, for the accommodation of the plaintiff (*a*),—or for the accommodation of some other person, who indorsed or delivered it to the plaintiff without consideration, or after it was due (*b*). In an action between immediate parties, the defendant may prove that the consideration for which he drew, accepted or indorsed the bill, or made or indorsed the note, has wholly failed (*c*); or that the consideration was illegal, immoral, or against public policy (*d*); or he may prove that it was obtained from him by fraud (*e*); or duress (*f*). And the like defence may be set up where the parties to the action are not the immediate parties to the bill, if it be also proved that the immediate party indorsed or delivered it to the plaintiff without consideration, or after it was due (*g*). He may prove an accord and satisfaction (*h*),

(*e*) 1 Arch. N. P. 125.
(*f*) Id. 130.
(*g*) Id. 130.
(*h*) Id. 132.
(*i*) Id. 133.
(*k*) Id. 135.
(*l*) Id. 14.
(*m*) Id. 24.
(*n*) Id. 17, 113.
(*o*) Id. 22, 116.
(*p*) 1 Arch. N. P. 15.
(*q*) Id. 58.
(*a*) Id. 27, 31, 37, 81, 96, 119, 126.
(*b*) Id. 37, 46, 90, 97, 131, 136.
(*c*) Id. 27, 28, 50, 120.
(*d*) Id. 29, 127.
(*e*) Id. 30, 52, 127.
(*f*) Id. 52, 121.
(*g*) Id. 54, 55.
(*h*) Id. 33, 50, 121, 126.

of payment (*i*), or a tender (*k*) on the day it was due, but not after. If he be drawer or indorser, he may prove that the plaintiff gave time to the acceptor, without his consent (*l*).

Upon giving notice of the defence, the defendant may prove that she was a feme covert (*m*), or an infant (*n*), at the time of drawing, &c. the bill or note; or the defendant may prove that he has become bankrupt and obtained his certificate (*o*); or that he had been discharged under an Insolvent Act (*p*); or that the action is barred by the statute of limitations (*q*).

And in general, he may give in evidence any matter which would be a good defence in an action of assumpsit (*r*).

3. *Action of Debt on Simple Contract.*

The action of debt, generally, is founded upon a contract to pay money. And debt on simple contract lies in all cases where indebitatus assumpsit will lie,—as for goods sold and delivered, goods bargained and sold, for work or labour, for money lent, paid, or had and received, and upon an account stated,—for use and occupation, and the like,—in fact, in all cases where, for a consideration, money is to be paid, by virtue of a contract not under seal, express or implied. And in framing the forms of summonses in the various actions, *ante*, p. 25, I have thought it more convenient to class these different causes of action under this head of debt on simple contract, and to frame them in analogy to the declaration in that action, than in assumpsit. We shall now treat shortly of the evidence required on the part of the plaintiff. As to the defences, as far as they are not noticed here, they may be taken to be the same as in assumpsit, already mentioned, *ante*, p. 58.

For goods sold and delivered.] The plaintiff must prove the sale, the delivery, and the price or value of the goods (*a*) The sale may be, and usually is, inferred from the fact of the goods being delivered to, and accepted by, the defendant (*b*). But a delivery of the goods, either to the defendant, or to some agent authorized by him, must be proved (*c*). As to the price or value,—in cases where there has been an express contract, and the price forming a part of it, of course that part of the plaintiff's case is proved by proof of the contract; but where

(*i*) 1 Arch. N. P. 34, 56, 98, 122, 128, 131.
(*k*) Id. 36, 82, 123.
(*l*) Id. 81, 93, 98, 124.
(*m*) Id. 30, 52, 99.
(*n*) Id. 30, 56, 81.
(*o*) Id. 51, 127.
(*p*) 1 Arch. N. P. 122.
(*q*) Id. 88.
(*r*) See *ante*, p. 58.
(*a*) 1 Arch. N. P. 230.
(*b*) Id. 230.
(*c*) Id. 232.

no price has been agreed upon, the plaintiff must prove the reasonable value of the goods (*d*).

Besides the ordinary defences in assumpsit, the defendant may prove that the goods were only sent to him upon commission (*e*); that they were in fact sold to another person, and not to him; that they were sold upon a credit which has not yet expired; or (even in the case of express contracts, where a price has been agreed upon), he may prove, in reduction of the sum to be recovered, that the goods were inferior in quality to what he had contracted for (*f*).

For goods bargained and sold.] The plaintiff must prove the sale of the goods, and produce and prove the written contract, if there be one; it must be proved to be a sale for a specific price (*g*), and if the price amount to or exceed 10*l.*, he must show that the provisions of the 17th section of the Statute of Frauds, mentioned, *ante*, p. 57, have been complied with (*h*). And he must prove that everything has been done,—such as weighing and measuring or the like,—necessary to the specific appropriation of the goods to the defendant; and that nothing remained to be done on the part of the plaintiff, but to deliver the goods on being paid the price for them (*i*). And upon such proof, the plaintiff will be entitled to recover the whole value of the goods, and not merely damages for not accepting or paying for them (*k*).

In defence, the defendant may prove any good and valid reason for his not taking the goods,—that they were to be of a certain quality, to answer a particular purpose, and that they are of a different quality and not fit for the purpose intended, —or that they were sold by sample, and that the bulk is inferior to the sample (*l*),—or any other fact which would justify the defendant in refusing to receive the goods.

For work and labour.] The plaintiff must prove that he was employed by the defendant to do the work, or show facts from which that can fairly be implied (*m*); he must prove the work done, and give general evidence of its being well done (*n*); and he must prove the price or reasonable value of it (*o*).

In defence, the defendant may prove that he employed another person, and not the plaintiff, to do the work (*p*); or that the work was so badly done, as to be useless for the purpose required (*q*); or, although not wholly useless, he may

(*d*) 1 Arch. N. P. 233.
(*e*) Id. 233.
(*f*) Id. 234.
(*g*) Id. 236.
(*h*) Id. 235, 236.
(*i*) Id. 236.
(*k*) Id. 235.
(*l*) 1 Arch. N. P. 236, 237.
(*m*) Id. 239.
(*n*) Id. 240.
(*o*) Id. 240.
(*p*) Id. 241.
(*q*) Id. 241.

prove, in reduction of the sum to be paid, the great inferiority of the work and materials (*q*).

For money lent.] The plaintiff must prove that a certain sum of money was lent by him, or by his agent for him, to the defendant (*r*). But a loan is not to be inferred from the mere fact of the plaintiff having handed over a sum of money to the defendant (*s*), or his giving him a cheque upon his banker which is afterwards paid (*t*), for he might have owed him the money. An I. O. U., however, is evidence of a loan by the plaintiff, although his name be not mentioned in it (*u*).

For money paid.] The plaintiff must prove that he paid a certain sum of money for the defendant, either at his request, or by compulsion (*v*). It must appear from the evidence, that it is money which was paid (*w*); that it was the plaintiff's money (*x*); that it was paid for, or for the use of, the defendant (*y*); and that it was paid, either at the request of the defendant, express or implied, or by compulsion (*z*).

For money had and received.] The plaintiff must prove the receipt of the money by the defendant, and also facts from which the law will imply that it was received by the defendant to the use of the plaintiff (*a*). It must appear that it was money which was received (*b*), and received by the defendant as principal party, and not merely as servant for another (*c*). As to the facts from which the law will imply that it was received by the defendant for the use of the plaintiff:—if it be really received on his account (*d*), or received from him for a particular purpose, to which it is not afterwards applied (*e*),—or received by the defendant for property of the plaintiff (*f*),—or in the hands of a stakeholder on an illegal wager, (in which case it may be recovered from him at any time before it is actually paid over to the winning party) (*g*),—or received by the defendant under a void authority (*h*),— or paid by the plaintiff, under a mistake of fact, not of law (*i*),—or paid by the plaintiff on a forged instrument (*k*),—or paid by the plaintiff for a consideration which afterwards fails (*l*),—or obtained from the plaintiff by misrepresentation or fraud (*m*),—or paid

(*q*) 1 Arch. N. P. 241.
(*r*) Id. 242.
(*s*) Id. 243.
(*t*) Id. 243.
(*u*) Id. 242.
(*v*) Id. 245.
(*w*) Id. 245.
(*x*) Id. 245.
(*y*) Id. 246.
(*z*) Id. 247.
(*a*) Id. 251, 252.
(*b*) 1 Arch. N. P. 252.
(*c*) Id. 252.
(*d*) Id. 254.
(*e*) Id. 254.
(*f*) Id. 255.
(*g*) Id. 256.
(*h*) Id. 257.
(*i*) Id. 258.
(*k*) Id. 260.
(*l*) Id. 261.
(*m*) Id. 264.

by him wrongfully, under compulsion (*k*):—in all these cases the law will presume that the money was had and received by the defendant to the plaintiff's use. But money paid by the plaintiff under an illegal contract, cannot in general be recovered back by him in this form of action; for in such a case he is *particeps criminis*, and having parted with his money freely, there is no reason he should have it again (*l*). So, if a man be under a moral obligation to pay money, and pay it, he cannot recover it back, although at the time he paid it, he was not aware that he could not be compelled by law to do so (*m*).

Upon an account stated.] The plaintiff must prove an account to have been stated between him and the defendant, by the defendant or some agent authorized by him, with the plaintiff or his agent, showing a balance to a certain amount to be due from the defendant to the plaintiff (*n*). But if one party state it, and the other assent to it, it is sufficient (*o*). So it may be implied from other facts proved; as for instance, an I. O. U. is good evidence of an account stated (*p*), so is a promise by the defendant to pay a certain sum (*q*), or an admission that he owes the plaintiff a certain sum (*r*), and the like.

For interest.] Interest is payable on bills of exchange and promissory notes, from the time they are due, or if payable on demand, from the time of an actual demand made or action brought (*s*). If goods be sold, payable by bill at a certain date, the seller will be entitled to interest from the time the bill (if given) would have become due (*t*). So by stat. 3 & 4 W. 4, c. 42, s. 28, upon all debts or sums certain, payable at a certain time or otherwise, the judge or jury may allow interest, if they think fit, from the time such sum became payable (if payable by virtue of a written instrument, at a certain time,) or if it be payable otherwise, then from the time payment is demanded and a notice given that interest will be claimed from that date (*u*). But interest is not payable on money lent, independently of the above statute, unless there is some agreement upon the subject, or unless it be payable by the custom of some particular trade (*v*). Where interest is payable under the above statute, or on bills of exchange or promissory notes, or upon goods sold, as above-mentioned, it is not necessary to sue separately for it, but the judge or jury give it as damages. But where it is payable on a loan of

(*k*) 1 Arch. N. P. 266.
(*l*) Id. 268.
(*m*) Id. 269.
(*n*) Id. 271.
(*o*) Id. 271.
(*p*) Id. 272.
(*q*) Id. 272.
(*r*) Id. 273.
(*s*) Id. 229.
(*t*) Id. 229.
(*u*) Id. 228.
(*v*) Id. 229.

money, by contract or custom, it is necessary to sue for it, and to prove the loan, and the contract or custom.

For work and labour as an attorney.] The plaintiff must prove that one calendar month at least before entering his plaint, he delivered to the defendant, or sent to him by post, or left for him at his place of abode or business, a bill of his fees, charges and disbursements, subscribed with his proper hand, or, in the case of partners, by one of them, or accompanied by a letter so signed, and referring to the bill (*w*). He must then prove a retainer of him by the defendant, either express, or to be implied from circumstances (*x*); that the business charged was done (*y*); and the reasonableness of the charges (*z*).

The defendant on the other hand, besides the defences usual in assumpsit, may prove that the bill was not delivered a calendar month before the plaint entered (*a*); that the business was done whilst the plaintiff was uncertificated (*b*); that the business, though done in the plaintiff's name was really done for the benefit of an unqualified person (*c*); that the business turned out to be wholly useless to the defendant, owing to the negligence or ignorance, or even the inadvertence or inexperience of the plaintiff (*d*); that the legal proceeding, in which the costs were incurred, is not yet completed (*e*); or that the plaintiff agreed to do it without charging for it (*f*), or the like.

For medicines by an apothecary.] The plaintiff must prove, either that he was in practice as an apothecary, on or before the 5th August, 1815, or that he has obtained a certificate from the Master, Wardens and Society of Apothecaries, enabling him to practise as an apothecary (*g*). He must then prove the delivery of the medicines, and the value of them.

For use and occupation.] The plaintiff must prove that the defendant held and occupied the house, lodgings or other premises under him, during the time for which rent is claimed (*h*). That he occupied, may be proved by any person who knows the fact; and that he occupied under the plaintiff, may be established by proof that he paid rent to him for the premises, or by giving in evidence the agreement or demise (not being by deed) under which he held (*i*). And lastly, the plaintiff must

(*w*) 1 Arch. Pr. 88.
(*x*) Id. 87.
(*y*) Id. 87.
(*z*) Id. 87.
(*a*) Id. 88.
(*b*) Id. 88.
(*c*) Id. 88.
(*d*) 1 Arch. Pr. 88, 89.
(*e*) Id. 89.
(*f*) Id. 89.
(*g*) 55 G. 3, c. 194, s. 21.
(*h*) Arch. Land. & T. 151.
(*i*) Id. 153.

prove the amount of compensation he is entitled to, for the use and occupation; which may be done by proof of the rent the defendant had previously paid, or by giving in evidence the agreement or demise (not being by deed) under which the defendant held; or if this cannot be done, he may prove by a witness the value of the premises to let for the time.

In defence, the defendant may dispute and disprove every thing the plaintiff is bound to prove (*k*); he may prove that he was evicted from the premises (*l*); or that he assigned them to another, and that the plaintiff accepted the other as his tenant (*m*); or that he surrendered them to the plaintiff, who accepted the surrender (*n*); that he was obliged to leave the premises, from their not being habitable for want of repair (*o*), or unwholesome from defect in the sewers (*p*), or rendered so uncomfortable by the misconduct of the landlord that he could not remain in them (*q*). But he cannot dispute or impugn the title of his landlord, from whom he received possession (*r*); although he may prove that his landlord's title has expired, or parted with (*s*), or that the landlord mortgaged the premises, and that the mortgagee has given him (the defendant) notice to pay the rent to him (*t*). The defendant may also prove that the plaintiff knowingly let the premises to him, for an illegal or immoral purpose; and it will be a good defence to the action (*u*). Besides these, the defendant may set up any defence, which would be available to him in assumpsit, as mentioned, *ante*, p. 58.

In other cases.] And generally, in all other cases of debt on simple contract, the plaintiff must prove the thing done for which payment is claimed, and the sum agreed to be given to him, or which he deserves to have, for it. The instances already given, will be a sufficient guide to the reader in other cases.

4. *Action of Debt on Bond or other Deed.*

On bond.] The plaintiff must produce the bond, and prove it by the attesting witness (*v*). And in the case of a money bond, it should seem that it will be a sufficient compliance with the stat. 4 & 5 Ann, c. 16, s. 13, to give the plaintiff judgment for what is due to him for principal and interest; although in the

(*k*) Arch. Land. & T. 154.
(*l*) Id. 155.
(*m*) Id. 156.
(*n*) Id. 158.
(*o*) Id. 158.
(*p*) Id. 158.
(*q*) Arch. Land. & T. 159.
(*r*) Id. 155.
(*s*) Id. 156.
(*t*) Id. 157.
(*u*) Id. 157.
(*v*) 1 Arch. N. P. 308.

superior courts the plaintiff is entitled to judgment for the penalty, and the writ of execution is afterwards indorsed to levy only the sum actually due for principal and interest, and costs (*b*).

In defence, the defendant may prove that the bond is a forgery; or that it has been altered since he executed it (*c*); or, that it was delivered by him as an escrow merely, on a condition which has not been performed (*d*); or, that it has been cancelled (*e*); or, that it was obtained from him by fraud or covin (*f*); or, that it was given for an illegal or immoral purpose or consideration (*g*); or he may prove that he has paid it (*h*), or otherwise performed the condition of it (*i*). So, he may prove a release (*k*), or tender (*l*), or, accord and satisfaction (*m*), or duress of imprisonment (*n*), the bankruptcy of the plaintiff (*o*), or in general any matter which shows that the bond is void or voidable, or that the plaintiff cannot legally sue upon it. He may also object to the bond being given in evidence, on the ground of its being on a wrong stamp (*p*).

And if the required notice of his defence be given, the defendant may prove coverture (*q*), bankruptcy and certificate (*r*), discharge under Insolvent Act (*s*), infancy (*t*), set-off (*u*), or show that the action is barred by the statute of limitations (*v*).

On other deed.] Debt lies on all deeds by which a party thereto binds himself absolutely to pay to another of the parties a sum certain (*w*); or where there is a covenant to pay, the party entitled to the money may sue in covenant or debt at his option (*x*). In order to maintain the action, the plaintiff has merely to produce the deed, and prove it by the attesting witness. The non-payment of the money is presumed, until the contrary be proved by the defendant. Most of the defences to debt on bond, are equally applicable to debt on other deeds (*y*).

5. *Action of Covenant.*

The action of covenant is the remedy the law assigns for

(*b*) 1 Arch. N. P. 352.
(*c*) Id. 314.
(*d*) Id. 316.
(*e*) Id. 315.
(*f*) Id. 316.
(*g*) Id. 317.
(*h*) Id. 319, 320.
(*i*) Id. 323.
(*k*) Id. 324.
(*l*) Id. 327.
(*m*) Id. 314.
(*n*) Id. 315.
(*o*) 1 Arch. N. P. 315.
(*p*) Id. 309.
(*q*) Id. 315.
(*r*) Id. 314.
(*s*) Id. 319.
(*t*) Id. 319.
(*u*) Id. 325.
(*v*) Id. 325.
(*w*) Id. 329.
(*x*) Id. 330.
(*y*) Id. 331.

all breaches of a contract under seal, whether the contract be a deed poll, or indenture (*q*). Covenants are sometimes implied; and, in such cases, the remedy is the same as upon an express covenant (*r*). The action may be brought by and against the original parties (*s*), their heirs, executors, or administrators (*t*), or their assigns (*u*).

In order to maintain the action, the plaintiff must produce the deed, and prove it by the attesting witness (*v*); he must prove the breach of covenant stated in the summons (*w*); and he must prove the damage he has sustained by it (*x*).

The defendant may set up the like defences generally, as in debt on bond (*y*).

6. *Action of Detinue.*

Detinue is one of the remedies the law gives for the recovery of personal chattels, title-deeds, or valuable securities, which are wrongfully detained from a person having legal right to the possession of them (*z*). To maintain the action, the plaintiff must prove that he has the right of property in the goods in question, and the right to the immediate possession of them (*a*); that they are in the possession of the defendant, who detains them, and refuses to give them up (*b*); and that they are of a certain value (*c*).

The defendant, in his defence, may dispute and disprove the right of property, or the plaintiff's right to immediate possession; for instance, he may prove that he has a lien upon them (*d*), or any other facts showing that the plaintiff has not the right to the immediate possession of them, or the right of property in them, or that he (the defendant) does not detain them (*e*). He may also prove that the action is barred by the statute of limitations (*f*).

7. *Action of Trespass.*

Trespass to Land.] To maintain this action, the plaintiff must prove that he was in actual possession of the house, land,

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(*q*) 1 Arch. N. P. 353.
(*r*) Id. 353.
(*s*) Id. 354, 377, 379.
(*t*) Id. 356, 387, 390.
(*u*) Id. 357, 358.
(*v*) Id. 365.
(*w*) Id. 368, 369, 381.
(*x*) See Id. 382, 392.
(*y*) See 1 Arch. N. P. 365, &c.
(*z*) Id. 393.
(*a*) Id. 401.
(*b*) Id. 398, 399.
(*c*) Id. 399.
(*d*) Id. 401.
(*e*) Id. 402, 403.
(*f*) Id. 403.

or premises in question, when the trespass was committed (*g*); that the trespass stated in the summons was committed (*h*) by the defendant, or by his orders, or at his instigation (*i*), in the house or place described in the summons (*k*); and the damage thereby sustained by him (*l*).

The defendant, in his defence, may prove that the plaintiff was not in possession of the premises at the time mentioned (*m*), or that no trespass was in fact committed (*n*). He may prove that he had the leave and licence of the plaintiff for what he did (*o*); or that his cattle committed the trespass owing to the defect of fences which the plaintiff was bound to maintain (*p*); or that the trespass was involuntary, and that he tendered amends before action brought (*q*); or he may prove an accord and satisfaction (*r*); or he may pay money into court (*s*); or he may prove a release (*t*); or, with notice, he may show that the action is barred by the statute of limitations (*u*). But he cannot set up any title in himself to the land or premises in question, or to any incorporeal hereditament arising out of them, such as a right of way, right of common, or the like; or if he do, and the judge be satisfied that it is meant seriously as a defence to the action, the action can proceed no further, as the court has no longer jurisdiction to entertain it (*v*).

Trespass to personal property.] To maintain this action, the plaintiff must prove, either that he was in possession of the property in question, or that he had the right of property in it, and also the right to immediate possession of it (*w*); that the defendant, or some person by his orders, or at his instigation, committed the trespass stated in the summons (*x*); and that he, the plaintiff, thereby sustained a certain damage by it (*y*).

The defendant, on the other hand, may not only dispute and disprove the trespass, and prove that the plaintiff had not the possession, or a right of property in, or a right to immediate possession of, the property in question,—but he may prove anything which admits the trespass, and that justifies or excuses it (*a*).

Trespass to the person.] In trespass for an assault and bat-

(*g*) 1 Arch. N. P. 437, 410.
~~(*h*) Id. 422.~~
(*i*) Id. 424.
(*k*) Id. 425.
(*l*) Id. 533.
(*m*) Id. 437.
(*n*) Id. 427.
(*o*) Id. 467.
(*p*) Id. 470.
(*q*) Id. 474.
(*r*) 1 Arch. N. P. 473.
~~(*s*) Id. 476, and *ante*, p. 35.~~
(*t*) Id. 476.
(*u*) Id. 472.
(*v*) Stat. s. 58, and *ante*, p. 3.
(*w*) 1 Arch. N. P. 481, 408, 409.
(*x*) Id. 477, 478, 413.
(*y*) Id. 533.
(*a*) Id. 484.

title against a mere wrong doer), or by the person having the right of property in the goods, and the right to the immediate possession of them (*h*), against the party guilty of the conversion, or by whose orders or directions it has been done (*i*).

In order to maintain the action, the plaintiff must prove either that he was in possession of the goods in question, or had the right of property and the right to immediate possession (*k*); that the goods came into the possession of the defendant, that he, or some person by his orders or directions, converted them (*l*), and lastly, the value of the goods.

In defence, the defendant may dispute and disprove every thing the plaintiff is bound to prove. He may pay money into court (*m*); he may give in evidence a release (*n*); and, if he have given the required notice, he may show that the action is barred by the statute of limitations (*o*).

SECTION VI.

The Hearing.

Before whom.] The judge of the court shall be the sole judge in all actions therein, and shall determine all matters of law; he shall also determine all matters of fact, unless one of the parties require a jury to be summoned (*a*).

Jury, in what cases.] In any action where the amount claimed shall exceed 5*l.*, either plaintiff or defendant may require a jury to be summoned to try it; and where the amount claimed shall not exceed 5*l.*, the judge in his discretion, on the application of either party, may order the action to be tried by jury (*b*).

The party requiring a jury to be summoned, must give [two clear days' notice thereof in writing (*c*)] to the clerk of the court; and the clerk of the court shall send notice of such demand to the opposite party, either by post, or by causing it to be delivered at his usual place of abode or business; but it shall not be necessary to prove on the trial that such notice was communicated to the other party by the clerk (*d*).

(*i*) 1 Arch. N. P. 599.
(*k*) Id. 607.
(*l*) Id. 601—604.
(*m*) Id. 611, and *ante*, p. 35.
(*n*) Id. 611.
(*o*) 1 Arch. N. P. 611.
(*a*) Stat. s. 69.
(*b*) Id. s. 70.
(*c*) Rule 20.
(*d*) Stat. s. 70.

The following may be the form of a

Demand of a Jury.

No. —. In the county court of ——, at ——.
Between A. B., plaintiff,
and
C. D., defendant.
Take notice, that I hereby demand and require that a jury may be summoned to try this cause.
A. B.
the above-named plaintiff, or *defendant* (*e*).
To —— clerk of the said court.

And the following is the form of the notice sent by the clerk to the opposite party.

Clerk's Notice.

No. —. In the county court of ——, at ——.
(Seal.)
Between A. B., plaintiff,
and
C. D., defendant.
Take notice, that the above-named cause will be tried by a jury, the above-named —— having demanded a jury therein.
——, Clerk of the court.
To ——, the above-named ——.

Also, the party thus requiring a jury, before he shall be entitled to have them summoned, must pay to the clerk of the court the sum of 5*s.* for payment of the jury; which sum shall be costs in the cause, unless the judge otherwise order (*f*).

Five jurors shall be impannelled and sworn; and they must give an unanimous verdict (*g*). They are sworn to "give true verdicts according to the evidence;" (*h*) and being once sworn, it is not necessary that they should be sworn in each trial afterwards (*i*). The oath is administered by the clerk of the court. Either party, however, may challenge all or any of the jurors, in the same manner he would be entitled to do in the superior courts (*k*).

The clerk of the court shall cause the jurors to be summoned. And for the purpose of enabling him to do so, the sheriff of every county, and the high bailiffs of Westminster

(*e*) This form is not in the schedule to the rules.
(*f*) Stat. s. 71.
(*g*) Id. s. 72.
(*h*) Stat. s. 72.
(*i*) Id. s. 73.
(*k*) Id.

and Southwark, shall deliver to him a list of persons residing within the jurisdiction of the court, and within their bailiwick, qualified and liable to serve as jurors in courts of assize and nisi prius; for which lists they shall be paid a fee of 2*d.* per folio. And whenever a jury is afterwards required, the clerk of the court shall cause so many persons on such list, as in the opinion of the judge shall be needed, to be summoned to attend the court at a time and place to be mentioned in such summons. But no person shall be summoned or compelled to attend more than twice within one year, or who shall have been summoned and attended on a jury at the assizes, or any court of nisi prius, or at the Central Criminal Court, for the same county, within the previous six calendar months. This summons is served, by delivering it to the juror himself, or to his wife or servant, or to any inmate at his usual place of abode, trading or dealing. And if he do not attend, he shall forfeit for his default, such sum, not exceeding 5*l.*, as the judge shall direct (*l*).

The following is the form of the

Summons to Jurors.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

You are hereby summoned to appear and serve as a juror in this court, at ——, *on* —— *the* —— *day of* ——, *at the hour of* ——, *upon the trial of the several cases to be then and there tried by juries; and in default of attendance, you will be liable to a penalty of 5l. by the statute of* 9 & 10 *Vict. c.* 95.

Given under the seal of the court, this —— *day of* ——, 18—.
——, *Clerk of the said court.*

To ——, *of* ——.

How.] All actions in these courts, are to be heard and determined in a summary way (*m*). Upon the day mentioned in the summons, each case will be called on in its order; and upon the plaintiff appearing, the defendant will then be required to appear, to answer to the plaint. And on answer being made, the judge shall proceed in a summary way to try the cause, and give judgment, without further pleading or formal joinder of issue (*n*). This of course assumes that both parties appear.

Or if the defendant consent in writing to a judgment for a certain amount, upon certain terms, then upon the plaintiff presenting such consent, and the signature of the defendant being admitted or proved, judgment shall be given, and an order made, accordingly.

(*l*) Stat. s. 72. (*m*) Id. (*n*) Id. s. 74.

The following may be the form of such consent.

Consent by Defendant to judgment, upon terms.

No. —. *In the county court of* ——, *at* ——.
Between A. B., plaintiff,
and
C. D., defendant.

I, the said C. D., hereby consent that this court shall give judgment against me in this action, for the sum of ——, *payable by the following instalments, that is to say* [here set out the times of payment or other terms agreed upon]; *And I, the said A. B. hereby consent to accept of the said sum of* ——, *payable as aforesaid, in full satisfaction of my claim in this action.*

Dated —— (*o*). *C. D.*
A. B.

But if the plaintiff do not appear on the day mentioned in the summons, or at any continuation or adjournment of the court or of the cause, the cause shall be struck out; and if in such a case the defendant appear, and shall not admit the demand, the judge may award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as in his discretion he shall think fit, which sum shall be recoverable in the same manner as any debt or demand, ordered by the court to be paid, may be recovered. But if in such a case, instead of denying the demand, the defendant or some person for him admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff,—the court, if it think fit, may proceed to give judgment as if the plaintiff had appeared (*p*).

The following is the form of the

Order for Costs to the Defendant, where the Plaintiff does not appear.

No. —. *In the county court of* ——, *at* ——.
(Seal.)
Between A. B., plaintiff,
and
C. D., defendant.

Upon hearing the defendant in this action, and it appearing to the court here, that the plaintiff therein has not appeared at this court on the —— *day of* —— (*being the day appointed for the trial thereof*), *to prosecute the same against the defendant, it is awarded and ordered by the judge of the said court, that the*

(*o*) This form is not in the schedule to the rules. (*p*) Id. s. 79.

sum of £—— shall be paid by the plaintiff to the defendant forthwith [or *on or before the —— day of ——*], *by way of costs and satisfaction for his trouble and attendance in that behalf.*

Given under the seal of the court, this —— day of ——, 18—.

By the court.

——, *Clerk.*

Or if the defendant shall not appear on the day mentioned in the summons, or at any continuation or adjournment of the court or cause, or sufficiently excuse his absence, or shall neglect to answer when called in court,—the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only; and the judgment thereupon shall be as valid as if both parties attended (*q*). But the judge, in such a case, at the same or any subsequent court, on sufficient cause being shown to him for the purpose, may set aside the judgment so given in the absence of the defendant, and the execution thereon, and may grant a new trial, upon such terms (if any) as to the payment of costs, giving security for debt or costs, or such other terms, as he may think fit (*r*). As to the form of bond, given as security upon such an occasion, see *post*, p. 84.

The following is the form of the

Order to set aside the Judgment.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

It is ordered, that a certain order of this court in this action, bearing date the —— day of ——, be rescinded.

Given under the seal of the court, this —— day of ——, 18—.

By the court.

——, *Clerk.*

Arbitration.] The judge may, in any case, with the consent of both parties, order the suit, with or without other matters within the jurisdiction of the court, in difference between the parties, to be referred to the arbitration of such person or persons, in such manner, and on such terms, as he shall think reasonable and just; and such reference shall not be revocable by either party, without the consent of the judge (*s*).

(*q*) Stat. s. 80. (*r*) Id. (*s*) Id. s. 77.

The following may be the form of the

Reference to Arbitration.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon reading the plaint in this cause, and by and with the consent of the said plaintiff and defendant, I, S. W., esquire, judge of the said court, do order that this suit [and all other matters, within the jurisdiction of this court, in difference between the said parties], be referred to the arbitration and award of J. N. of ——, *so that he make and publish his award herein on or before* ——; *and I hereby, with the like consent, order that the death of either party in the mean time shall not be deemed a revocation of this submission or reference, but that the said J. N. may nevertheless proceed to make his award for or against the representatives of such deceased party, as if such representatives were a party to this reference. And I further order that the said award, when made, be entered as a judgment of the said court in this cause.*

S. W.

Given under the seal of the court, this —— *day of* ——, 184— (*r*).

By the court.
——, *Clerk.*

The award of the arbitrators or umpire, when made, shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge (*s*).

The judge, however, may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of the award, set it aside; and he may, with the consent of both parties, revoke the reference, or order another reference to be made in manner aforesaid (*t*).

Time given, or adjournment.] The judge may, in any case, make orders for granting time to the plaintiff or defendant, to proceed in the prosecution or defence of the suit (*u*).

(*r*) This form is not in the schedule to the rules.
(*s*) Stat. s. 77.
(*t*) Stat. s. 77.
(*u*) Id.

The following may be the form of the

Order for Time.

No. —. *In the county court of* ——, *at* ——.
(Seal.) *Between A. B., plaintiff,*
and
C. D., defendant.

Upon the application of the [*defendant*], *and upon hearing both the said parties, it is ordered by the court here that the said* [*defendant*] *have further time to* ——.

Given under the seal of the court, this —— *day of* ——, 18— (*u*).

By the court.
——, *Clerk.*

Also, the judge may, from time to time, adjourn any cause, or the hearing or further hearing of any cause, in such manner as to the judge may seem fit (*v*).

The following is the form of the

Order for Adjournment.

No. —. *In the county court of* ——, *at* ——.
(Seal.)
Between A. B., plaintiff,
and
C. D., defendant.

It is ordered, that the trial of this action be adjourned until —— *upon* [here state the terms or conditions of the adjournment, if any.]

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.
——, *Clerk.*

Judgment.] After the hearing of the cause, the judge gives judgment for the plaintiff or for the defendant. The judgment is entered shortly, by the clerk of the court, in the book in which he enters the proceedings in the cause; and then an order is made requiring the party to pay the amount. And in this order, the judge may state at what time or times, and by what instalments, the debt or damages and costs shall be paid; and all such monies shall be paid into court, unless the judge shall otherwise order (*w*).

(*u*) This form is not in the schedule to the rules.

(*v*) Stat s. 81.

(*w*) Id. s. 92.

The party against whom this order is made, must be served with it, in the same manner as a summons to appear is served (*x*).

The following are the forms of the

Order upon a Judgment for the Plaintiff.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon hearing this cause at a court holden at ——, *on the* —— *day of* ——, *it is adjudged, that the said plaintiff do recover against the said defendant the sum of £* —— *for his debt* [*or damages by him sustained*], *together with the costs of suit amounting to the sum of £* ——. *And it is ordered that the said defendant do pay the same to the clerk of the court at his office in* ——, *on or before the* —— *day of* ——. *Given under the seal of the court, this* —— *day of* ——, 18—.

By the court.
——, *Clerk.*

Attendance at the office, from 10 *till* 4 *o'clock.*

The like where there is an Apportionment of Costs.

No. —. *In the county court of* ——, *at* ——.
Between A. B., plaintiff,
and
C. D., defendant.

After the words in the order, *supra*, "*together with the costs of suit, amounting to the sum of £*——]; *but inasmuch as the said defendant hath succeeded in proving a certain issue joined between the said parties, to wit,* ——, *and ought to be allowed his costs attending the proof of the same, amounting to* ——, *to be deducted from the said sum of* ——, *recoverable by the said plaintiff as aforesaid, it is ordered that the defendant do pay the sum of* ——, (*being the balance payable to the plaintiff after the deduction aforesaid,*) *to the clerk of the court,*" *&c.* (*y*).

(*x*) See Rule 14, *ante*, p. 31, and see as to the service, *ante*, p. 9.

(*y*) This form is not in the schedule to the rules.

Order upon a Judgment for the Plaintiff, payable by Instalments.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon the hearing of this cause, at a court holden at ——, *on the* —— *day of* ——, *it is adjudged, that the said plaintiff do recover against the said defendant the sum of £* ——, *for his debt,* [or *damages by him sustained*] *in a certain action, together with the costs of suit, amounting to the sum of £*——, *by instalments* ——, *the first instalment to be paid upon the* —— *day of* ——. *Such payments to be made at the office of the clerk of this court at* ——.

Given under the seal of the court, this —— *day of* ——, 18—.

By the court,
——, *Clerk.*

Note.—*Office hours, from* 10 *till* 4.

By rule 23, when any order is made for the payment of any debt, damages, costs, or other sum of money, by instalments, such instalments shall be payable at the office of the clerk of the court, at such periods as the court shall order; and if no order be made, then the first shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at like periods of a calendar month from the day of the previous instalment becoming due.

As to judgments for a defendant, they are either judgments of nonsuit, or upon a finding for the defendant. By sect. 89 of the statute, the judge shall have power to nonsuit the plaintiff, in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or the defendant to the judgment of the court. And by sect. 79, if the plaintiff shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant; and in either case, when the defendant shall appear, and shall not admit the demand, the judge may award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage, ordered to be paid by the same court, can be recovered. In the forms of the entries given at the end of the rules and forms framed by five of the judges, for these courts, no distinction is made between a judgment of nonsuit and a judgment upon a finding for the defendant; and the form

of the order is the same in both cases. But it is clear from the 89th section, mentioned *infra*, that a distinction ought to be made in the entry, although perhaps it is not necessary in the order.

The following is the form of the

Order upon a Judgment for the Defendant.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

At a court holden at ——, *on the* —— *day of* ——, *it was adjudged, that judgment should pass against the said plaintiff, and that the said plaintiff should pay the sum of* —— *to the said defendant, by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of* —— *for his costs and charges by the said defendant about his suit in that behalf expended, amounting together to the sum of* ——, *on or before the* —— *day of* ——. *It is therefore ordered, that the said plaintiff do pay the same to the clerk of the court, at his office at* ——, *on or before the* —— *day of* ——.

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.
——, *Clerk.*

Office hours, from 10 *till* 4.

The like, where there is an apportionment of Costs.

After the words in the order, *supra*, "*amounting together to the sum of £*——;] *but inasmuch as the said plaintiff hath succeeded in proving a certain issue joined between the said parties, to wit,* ——, *and ought to be allowed his costs attending the proof of the same, amounting to* ——, *to be deducted from the said sum of* —— *so payable to the said defendant as aforesaid, it is ordered that the plaintiff do pay the sum of* ——, (*being the balance payable to the defendant after the deduction aforesaid,*) *to the clerk of the court,*" &c. (*z*).

Every order and judgment of any court holden under this Act, (except as herein provided), shall be final and conclusive between the parties; but the judge shall have power to nonsuit the plaintiff, in every case in which satisfactory proof shall not be given to him, entitling either the plaintiff or defendant to the judgment of the court; and shall also, in every case whatever, have the power, if he shall think fit, to

(*z*) This form is not in the schedule to the rules.

order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings (*x*). The meaning of this clause is, evidently, that all judgments of the court shall be final, except judgments of nonsuit, and cases where a new trial is granted. As to new trials, see *post*, p. 83.

Cross judgments.] If there be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum (*y*).

And satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments (*z*). The words here "satisfaction for the *remainder*," seem to have been used by mistake. What was probably intended, was,—and which would accord with the practice in the superior courts,—satisfaction shall be entered on the smaller judgment, and satisfaction at the same time shall be entered on the larger judgment as to the sum for which the smaller judgment was given; and afterwards, upon the residue of the larger judgment being levied or paid, satisfaction may be entered on it for the residue.

Costs.] If the plaintiff recover, he shall be entitled to his costs, unless the judge direct to the contrary (*a*).

On the other hand, if the plaintiff be nonsuit, or judgment be given for the defendant, in cases where the defendant appears and does not admit the demand,—the judge may award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as in his discretion he shall think fit; and such sum shall be recoverable from the plaintiff by such ways and means, as any debt or damage ordered to be paid by the same court can be recovered (*b*). See the form of the order in this case, *ante*, p. 81.

And all costs of any action or proceeding in the court, not herein otherwise provided for, shall be paid by, or apportioned between, the parties, in such manner as the judge shall think fit, and, in default of any special directions, shall abide the event of the action; and execution may issue for the recovery of any such costs, in like manner as for any debt adjudged in the said court (*c*). See the forms of apportionment, *ante*, pp. 79, 81.

And in all cases where a judgment shall be obtained for costs, the judge may make an order stating the time or times

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(*x*) Stat. s. 89.
(*y*) Id. s. 93.
(*z*) Id.
(*a*) See Id. s. 88, *infra*.
(*b*) Id. s. 79.
(*c*) Id. s. 88.

and by what instalments such costs shall be paid; and the same shall then be paid into court, unless the judge shall otherwise direct (*d*).

All costs shall be taxed by the clerk of the court (*e*). The sums payable for fees, and to be allowed on taxation, will be found in the Appendix, p. 199. As to the expenses of witnesses, the judge shall in each case order what number of witnesses shall be allowed on taxation of costs, the allowances for whose attendance shall be according to the following scale, unless otherwise ordered, but in no case shall exceed such scale (*f*).

Allowance to Witnesses.

	s.	*d.*
Gentlemen, merchants, bankers, and professional men	7	6
Tradesmen, auctioneers, accountants, clerks, and yeomen	5	0
Journeymen, labourers, and the like . . .	2	0
Travelling expenses per mile, one way . . .	0	6

New trial, setting aside proceedings, &c.] We have already seen (*g*), that where the plaintiff appears, but the defendant does not, the judge, upon due proof of the service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended. But the statute provides, that the judge, in any such cases, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms (if any) as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose (*h*). And not only in such cases, but in every case whatsoever, the judge shall have the power, if he shall think fit, to order a new trial to be had, upon such terms as he shall think reasonable, and in the mean time to stay the proceedings (*i*).

But no application for a new trial, or to set aside any proceedings, shall be made subsequently to the court at which such trial or other proceeding shall have been had, unless the party making such application shall have given a written notice thereof to the clerk of the court at his office, and to the other party, by serving the same personally on such party, or leaving the same at his usual place of abode or business, seven clear days before the time of holding the court at which such application shall be made (*k*).

(*d*) Stat. s. 92. See *ante*, p. 40.
(*e*) Rule 36.
(*f*) Stat. s. 73.
(*g*) *Ante*, p. 76.
(*h*) Stat. s. 80.
(*i*) Id. s. 89.
(*k*) Rule 21.

The following may be the form of the

Notice of Application for a New Trial, or to set aside Proceedings.

No. —. In the county court of ——, at ——.
Between A. B., plaintiff,
and
C. D. defendant.

Take notice, that I intend, at the next sitting of this court, to apply to the judge thereof [for a new trial of this cause, or *to set aside the proceedings herein]. Dated ——.*
A. B. the said [plaintiff] (l).
To —— the clerk of the said court, or *the said [defendant.]*

The following is the form of the

Order for a New Trial.

No. —. In the county court of ——, at ——.
(Seal.)
Between A. B., plaintiff,
and
C. D., defendant.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties, on ——, [set out the terms or conditions, if any, on which the order is made].
Given under the seal of the court, this —— day of ——, 18—.
By the court.
——, Clerk.

And the following may be the

Bond thereupon, as Security.

Know all men by these presents that we, C. D. of ——, maltster, E. F. of ——, butcher, and G. H. of ——, carpenter, are jointly and severally held and firmly bound to A. B. in the sum of —— pounds of lawful money of Great Britain, to be paid to the said A. B., his certain attorney, executors or administrators; for which payment well and truly to be made, we bind ourselves and each and every of us, our and each and every of our heirs, executors and administrators firmly by these presents, sealed with our seals. Dated this —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, and in the year of our Lord 184—.

(*l*) This form is not in the schedule to the rules.

Whereas a certain action was brought in the county court of ——, at ——, wherein the said A. B. was plaintiff, and C. D. defendant, and such proceedings were thereupon had, that judgment therein was given for the said A. B. And whereas afterwards, upon the application of the said C. D., the said judgment so given was set aside, and a new trial granted, [upon payment of costs by the said C. D., and upon his executing a bond, with two sufficient sureties, to the said A. B., conditioned that the said C. D. should pay the debt and costs which might be recovered by the said A. B. in such new trial, and to satisfy any judgment the said A. B. should obtain therein]: Now the condition of this obligation is such, that if upon such new trial of the said cause, the said A. B. shall recover any debt or costs, and obtain judgment for the same, and if the said C. D. shall pay such debt and costs so recovered, and shall satisfy the judgment so ootained, then this present obligation shall be void, or otherwise to remain in full force and virtue (m).

Signed, sealed, and delivered	*C. D.* [L.S.]
in presence of	*E. F.* [L.S.]
I. K.	*G. H.* [L.S.]

The following is the form of the

Order to stay Proceedings.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B. plaintiff,
and
C. D., defendant.

It is ordered that all further proceedings in this action be stayed. Given under the seal of the court, this —— *day of* ——, 18—.

By the court.
——, *Clerk.*

SECTION VII.

Execution.

1. *Execution within the District.*
2. *Execution out of the District.*
3. *Interpleader.*

1. *Execution within the district.*

In what cases.] Where the judge shall make an order for

(m) This form is not in the schedule to the rules.

the payment of money, the amount,—in case of default or failure of payment thereof, forthwith, or at the time or times or in the manner thereby directed,—shall be recoverable by execution against the goods and chattels of the party against whom such order shall be made (*a*). And if the order be for payment of the money by instalments, execution upon such order shall not issue against the party, until after default in payment of some instalment according to such order; and execution or successive executions may then issue for the whole of the said sum of money and costs remaining unpaid, or for such portion thereof as the judge shall order either at the time of making the original order, or at any subsequent time (*b*).

But no execution shall issue by or against any person, who is not a party to the suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same as in ordinary cases (*c*). And where a judgment has been given for or against a person deceased, [execution shall not be sued out by or against the executors or administrators,] but the executors or administrators may sue or be sued upon the judgment (*d*).

Nor shall execution issue against the goods of a foreign ambassador, or of his "domestic or domestic servant" (*e*).

And if it shall at any time appear, to the satisfaction of the judge, by the oath or affirmation of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or an instalment thereof, ordered to be paid as aforesaid, it shall be lawful for the judge, in his discretion, to suspend or to stay any judgment, order or execution, given, made or issued in such action, for such time and on such terms as the judge shall think fit, and so from time to time, until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased (*f*).

The following is the form of the

Order to suspend or stay the Judgment, &c.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B. plaintiff,
and
C. D. defendant.

It is ordered, that an order of this court bearing date ——

(*a*) Stat. s. 94.
(*b*) Id. s. 95.
(*c*) Rule 27.
(*d*) Rule 28.
(*e*) 7 Anne, c. 12.
(*f*) Stat. s. 105.

[or *the judgment herein*, or *execution herein issued against the goods or person of the defendant*] *be suspended until* ——, [*upon payment of costs by* ——]

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.
——, *Clerk.*

But no judgment or execution shall be stayed, delayed or reversed upon or by any writ of error, or any supersedeas thereon, to be sued for the reversing of any judgment given in any court holden under the provisions of this Act (*g*).

For what amount.] The execution, as to the sum to be levied, must in ordinary cases strictly pursue the order upon the judgment (*h*). But where the order is for payment of money by instalments, if default be made in the payment of any instalment, then execution may issue for all that then remains due and unpaid, "or for such portion thereof as the judge shall order, either at the time of making the original order, or at any subsequent time, under seal of the court" (*i*). In the case of cross judgments, however, we have seen (*k*) that execution shall be sued out for the balance only, after deducting the smaller from the larger judgment (*l*).

When and how issued.] If default be made in the payment of money ordered, at the time mentioned in the order, the clerk of the court, at the request of the party prosecuting such order, shall issue, under the seal of the court, a *fieri facias*, as a warrant of execution, to the high bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied, by distress and sale of the goods and chattels of the party against whom the order was obtained, wheresoever they may be found within the district of the court, whether within liberties or without, such sum of money as shall be so ordered, and also the costs of the execution (*m*). So, where the money is payable by instalments, execution for all that remains unpaid, may issue, upon default in payment of any instalment (*n*).

And in or upon every warrant of execution, the clerk of the court shall cause to be inserted or indorsed the sum of money and costs adjudged, with the sums allowed by this Act as increased costs for the execution of such warrant (*o*).

(*g*) Stat. s. 108.
(*h*) See Stat. s. 94, *infra*.
(*i*) See Id. s. 95.
(*k*) *Ante*, p. 43.
(*l*) Stat. s. 93.
(*m*) Id. s. 94.
(*n*) Id. s. 95.
(*o*) Id. s. 109.

The following are the forms of the

Warrant of Execution at the suit of a Plaintiff.

No. —. In the county court of ——, at ——.
(Seal.) *Between A. B. plaintiff,*
and
C. D. defendant.

Whereas at a county court duly holden at ——, on the —— day of ——, at ——, within the jurisdiction of the said court, before ——, the judge of the said court, the said plaintiff, by the consideration and judgment of the said court, recovered against the said defendant, the sum of £ ——, for a certain debt before that time due and owing to the said plaintiff, [or *for certain damages by him sustained, and by the said court awarded to be paid to him the said plaintiff*] *together with the costs of suit, by the said plaintiff in that behalf expended: and whereas the said defendant, by an order of the said court bearing date the day and year aforesaid, was ordered to pay the said debt* [or *damages*] *together with the said costs, amounting together to the sum of ——* [state the time for payment]: *And whereas the said sum of ——* [or *the sum of ——, being part of the said sum of ——*, as the case may be], *has not been paid to the said plaintiff, pursuant to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found within the district of this court (excepting the wearing-apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of ——, and also the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, of the said defendant, which may be there found, or such part, or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.*

Given under the seal of the court, this —— day of ——, 18—.
By the court.
——, Clerk of the said court.

[In cases of cross-judgments the execution must be stated to be for the balance.]

To ——, high bailiff of the said court, and other the bailiffs thereof.

	£	s.	d.
Debt.....			
Costs			
Execution.....			

Notice.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

Warrant of Execution by a Defendant for Costs, &c.

No. —. *In the county court of* ——, *at* ——.
(Seal.) *Between A. B. plaintiff,*
and
C. D. defendant.

Whereas at a county court duly holden at ——, *within the jurisdiction of the said court, on the* —— *day of* ——, *before* ——, *the judge of the said court, the said plaintiff appeared* [or *did not appear*] *to prosecute his plaint against the said defendant in an action of debt* [or *to recover damages*] *for* [set out the substance of the plaint] : *And whereas the said plaintiff, at the hearing of the said plaint, did not make proof of his debt* [or *demand*] *to the satisfaction of the said court, and thereupon it was ordered and adjudged by the said court, that judgment should be entered for the said defendant, and that the said plaintiff should pay to the said defendant the sum of* £——, *by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of* £—— *for his costs and charges, by the said defendant about the said suit in that behalf expended, amounting together to the sum of* £——, *on or before the* —— *day of* —— : *And whereas the said sum of* £—— *has not been paid to the said defendant, pursuant to the said judgment and order : These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said plaintiff, wheresoever they may be found within the district of this court, (excepting the wearing-apparel and bedding of the said plaintiff or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of* £——, *and also the costs of this execution ; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said plaintiff, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.*

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.

——, *Clerk of the said court.*

To ——, high bailiff of the said court, and the other bailiffs thereof.

	£	s.	d.
Costs...			
Execution..			

Notice.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

Within what time to be executed.] No warrant of execution shall be executed after the expiration of two calendar months from the date thereof (*p*).

And if the party, against whom an execution issues, shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the clerk of the court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs indorsed on the warrant, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty (*q*). As to the fees, see the Appendix, p. 200, schedule D.

How executed.] The warrant of execution requires the bailiff to make and levy, by distress and sale of the goods and chattels of the party, wheresoever they may be found within the district of the court, (excepting the wearing apparel and bedding of the party, and his family, and the tools and implements of his trade, if any, [amounting altogether] to the value of five pounds), the sum stated, and the costs of the execution; and to seize or take any money or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of the execution, and the costs of making and executing the same (*r*). And all this, the bailiff must do, in execution of the warrant.

(*p*) Rule 37.

(*q*) Stat. s. 109, and see *Bayley* v. *Potts*, 8 Ad. & El. 272.

(*r*) See the warrant, *ante*, pp. 88, 89, and see stat. ss. 94 & 96.

The bailiff therefore may enter the house of the party, against whom he has a warrant of execution, and there seise his goods, &c. under it. He cannot break open an outer door, to effect an entrance; but having once entered by the outer door, he may break open an inner door, even without previously demanding to have it opened (*s*). Or he may enter the house of a third party, within the district, for the purpose, if there be goods, &c. of the debtor there; but he will only be justified in doing so, in the event of finding goods, &c., there, which may be legally seized and sold under the warrant (*t*). Having made the seizure, the bailiff may either remove the goods to some fit place, or may leave them on the premises, and leave some person in possession of them (*u*). Afterwards he makes an inventory of the goods, or of so much as he may deem sufficient to satisfy the sum indorsed; and, at the end of five days, he proceeds to sell them, in the manner hereinafter directed (*v*).

All constables and other peace officers, within their several jurisdictions, shall aid in the execution of every such warrant (*w*).

What goods &c. may be taken.] Every bailiff or officer, executing such warrant of execution, may by virtue thereof seize and take any of the goods and chattels of such person, —excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of five pounds, which shall to that extent be protected from such seizure (*x*). That is to say, the excepted articles altogether, shall not exceed in value the sum of five pounds.

Also, under the warrant, the bailiff may "seize and take any money, or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid" (*y*). And the high bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money, which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of

(*s*) *Hutchinson* v. *Birch*, 4 Taunt. 619.
(*t*) Stat. s. 106, 2 Arch. Pr. 126.
(*u*) See *Blades* v. *Arundale*, 1, M. & S. 711, *Ackland* v. *Paynter*, 8 Price, 95, *Doker* v. *Hasler*, 2 Bing. 479.
(*v*) *Post*, p. 98.
(*w*) Stat. s. 94.
(*x*) Id. s. 96.
(*y*) Id. s. 96.

any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived (*z*). The stat. 1 & 2 Vict. c. 110, s. 12, contains the same provision as to the execution of a *fieri facias* issuing out of the superior courts, except that the sheriff there sues upon the securities, and not the plaintiff as under this Act. And under stat. 1 & 2 Vict. c. 110, s. 12, where money was paid into the hands of the sheriff of Gloucestershire by a defendant arrested upon a *ca. sa.*, and the writ was afterwards set aside and the money ordered to be returned to him; and the plaintiff then sued out a *fi. fa.* directed to the sheriff of Gloucestershire, and another to the sheriff of Middlesex, and as the London agent of the sheriff of Gloucester was about to pay the money over to the defendant, the sheriff of Middlesex claimed to have it handed over to him, under the *fi. fa.* which he held: the court held that it was not money of the defendant until it was actually paid to him, and that therefore before it was so paid, it could not be seized under the *fi. fa.* (*a*) So, where money is paid into the superior courts in lieu of bail, it cannot be taken under a *fi. fa.* in another action against the defendant, even although bail above have been put in and perfected, and the money remain in court; for the above section does not extend to money in the hands of a third party in trust for the debtor (*b*). So, where the sheriff, at the time a *fi. fa.* is lodged with him against a defendant, happens to have a balance in his hands arising from a former execution against the same party, he cannot seize such balance under the second writ; for it is a debt due from the sheriff to the defendant, and debts cannot be seized under the above statute (*c*). So, where a sheriff levies under a *fi. fa.* upon the goods of a defendant, and whilst the money is in his hands, a *fi. fa.* is lodged with him against the plaintiff: he cannot seize that money under the latter writ, unless it be the identical money he received for the goods, and set apart and ear-marked as the property of the party (*d*).

Fixtures.] It is doubtful whether fixtures, even tenant's fixtures, can be seized under a warrant of execution. The word "chattels" after "goods," usually means chattels *ejusdem generis* with goods, namely personal chattels; and therefore, the clause in the bankrupt Act (*e*), which vests goods and chattels, which were in the order and disposition of the bankrupt at the

(*z*) Stat. s. 97.

(*a*) *Masters* v. *Stanley*, 8 Dowl. 160, 9 Law J. 145, ex.

(*b*) *France* v. *Campbell*, 9 Dowl. 914.

(*c*) *Harrison* v. *Paynter*, 6 Mees. & W. 387.

(*d*) *Wood* v. *Wood*, 4 Q. B. 397.

(*e*) 6 G. 4, c. 16, s. 72.

time of his bankruptcy, in his assignees, has been holden not to include fixtures (*f*). So, fixtures cannot be seized in a distress for rent. And yet, under the ordinary writ of *fieri facias*, which authorizes the sheriff to seize the "goods and chattels" of a party, the sheriff may seize all tenant's fixtures, which the party himself might remove (*g*); and the same as to trade fixtures, such for instance as vats, which the tenant had fixed to the freehold, for the purposes of his trade as a soap boiler (*h*), or the like. So, under the word "chattels" in the *fi. fa.*, the sheriff may sell a lease or term for years belonging to the person against whom the writ has issued (*i*), although the term itself remains in the debtor, until the sale has been perfected by assignment (*k*). So the sheriff, under a *fi. fa.* may sell the growing crops upon land in the occupation of a tenant for a term of years (*l*); provided he sell them in the manner directed by stat. 56 G. 3, c. 50, where there is a custom of the country or covenant to expend the same upon the land.

But if the execution debtor be owner of the freehold, those fixtures which are actually attached to it, such as ranges, ovens, and the like, cannot be taken even under a *fi. fa.*, for they are parcel of the freehold, and not goods or chattels (*m*); none but trade fixtures, or such as go to the executor, and not to the heir, can in such a case be seized under a *fi. fa.* (*n*).

Whose goods.] The execution must be against the goods and chattels of the party, against whom the order is made (*o*). The goods, &c. seized, therefore, must belong to him (*p*). And therefore, if they be really the goods of another, although in the possession and apparent ownership of the defendant, they cannot be taken under an execution against him (*q*). For instance, goods on which a party has a mere lien, cannot be seized and sold under an execution against him (*r*); although goods of his, in the hands of a third person, and on which such third person has a lien, may, upon satisfaction of the lien (*s*). So, goods lent on hire, cannot be taken in execution for the debt of the hirer (*t*); goods of a testator, in the hands of an

(*f*) 2 Arch. Pr. 122.
(*g*) *Poole's* case, 1 Salk. 368.
(*h*) *Doe* v. *Donston*, 1 B. & A. 230. See *Doe* v. *Jones*, 11 Law J. 30 ex.
(*i*) 2 Arch. Pr. 122.
(*k*) *Playfair* v. *Musgrove et al.*, 14 Mees. & W. 239.
(*l*) See *Tomkins* v. *Russell*, 9 Price, 287. *Hodgson* v. *Gascoigne*, 5 B. & A. 88.
(*m*) *Wynne* v. *Ingleby*, 5 B. & A. 625.
(*n*) See Arch. Land. & Ten. 369, 370.
(*o*) Stat. s. 94.
(*p*) Id. s. 96.
(*q*) See *Dawson* v. *Wood*, 3 Taunt, 256. *Edwards* v. *Bridges*, 2 Stark. 396. *Saunderson* v. *Baker*, 2 W. Bl. 832.
(*r*) *Legg* v. *Evans et al.*, 6 Mees. & W. 36.
(*s*) *Proctor* v. *Nicholson*, 7 Car. & P. 67.
(*t*) *Dean* v. *Whittaker*, 1 Car. & P. 347.

executor, cannot be taken for the debt of the executor (u). So, where the furniture of a house, occupied by the defendant, were seized under a *fi. fa.* against him, and it appeared that both house and furniture had been let to him as tenant, but that afterwards the landlord by agreement sold the house and furniture to him for 900*l.*, the purchase money to be paid on completion of a good title; and before a good title was made out, or the purchase money paid, the sheriff seized the furniture under a *fi. fa.* against the tenant, shortly after which the agreement for the sale was rescinded by both parties: the court held that the contract for the sale of the house and furniture was entire, and that the purchase of the former not being completed, no property in the furniture passed to the tenant; and that the sheriff therefore had no right to seize it under the *fi. fa* (v). So, where a father and son were of the same name, and the goods of the father were seized under a *fi. fa.*, in an action against the son, in which however the son was not described as "the younger": the court held, that although without the addition of "the younger," the defendant in the action would be presumed to be the father, yet such presumption, like every other, might be rebutted; and as in this case it was rebutted by proof that the action was brought against the son and not the father, the sheriff was liable to an action of trespass for seizing the goods of the father (w).

Goods of a bankrupt.] Formerly, where a trader had committed an act of bankruptcy, which was followed by a commission or fiat, his goods could not legally be taken under an execution against him, even although the sheriff and execution creditor had no notice of the act of bankruptcy (x); because the title of the assignees, when appointed, had relation back to the act of bankruptcy, and the goods from thenceforth were the property of the assignees, not of the bankrupt. But if the seizure were before the act of bankruptcy, the sale might be after it, in all cases where the judgment was not on a warrant of attorney, &c. (y). But by stat. 2 & 3 Vict., c. 29, s. 1, all executions against the lands and tenements, or goods and chattels of a bankrupt, "*bonâ fide* executed or levied before the date and issuing of the fiat," shall be valid, notwithstanding any prior act of bankruptcy,—provided the person at whose suit or on whose account such execution shall be issued [or his attorney in the cause (z)], had not, at the time of executing

(u) *Farr v. Newman*, 4 T. R. 621; but see *Quick* v. *Staines*, 1 B. & P. 203.

(v) *Langton* v. *Toogood*, 13 Mees. & W. 27.

(w) *Jarmain* v. *Hooper et al.*, 6 Man. & Gr. 827, 13 Law J. 636, cp.

(x) *Price* v. *Helyar*, 4 Bing. 507.

(y) See 6 G. 4, c. 16, s. 108, and *infra*. And see *Johnson et al.* v. *Evans et al.*, 7 Man. & Gr. 249.

(z) *Rothwell* v. *Timbrell*, 1 Dowl. N. C. 778.

or levying the same, notice of any act of bankruptcy by such bankrupt committed; provided also that nothing herein contained shall be deemed or taken to give validity to any execution founded on a judgment on a warrant of attorney or cognovit given by any bankrupt by way of fraudulent preference. The word "levied" here, means a seizure of the goods under the writ (*a*); and the words *bonâ fide* have reference to the judgment creditor merely (*b*). The statute, however, does not legalize a levy, which is in itself an act of bankruptcy, as for instance, where a trader procures his goods to be taken in execution, with intent to defeat or delay creditors (*c*). The execution, to be valid, must be levied before the date and issuing of the fiat; and the court, in such a case, will take notice of a fraction of a day (*d*). And where it was not sued out until after the issuing of the fiat, and the sheriff on that account returned *nulla bona*; but before the return the court of review made an order annulling the fiat, and after the return, the order was confirmed by the Lord Chancellor: as it appeared that the fiat was not annulled for any defect which rendered it originally void, the court held that the return was good, as the order of the court of review was of no force until it was confirmed by the Lord Chancellor (*e*); but if the fiat had been annulled for a defect which rendered it originally void, such as the want of a petitioning creditor's debt, or the like, it would have been otherwise (*f*). To render the execution valid, also, it is necessary that neither the execution creditor, nor his attorney in the cause at the time of the levy, should have notice of any prior act of bankruptcy. And if any express notice be given, it seems not to be sufficient to state in it generally that the party has committed an act of bankruptcy, but it must go on to show what that act of bankruptcy was; and that act of bankruptcy must appear on the face of the notice to be complete at the time (*g*).

But the above stat. 2 & 3 Vict., c. 29, has no reference to judgments by default; these are provided for by other statutes. And first, by stat. 6 G. 4, c. 16, s. 108, it is provided that no creditor, though for a valuable consideration, who shall sue out any execution upon any judgment obtained by default, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateably with such other creditors. And therefore where, under a *fi. fa.* upon such a

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(*a*) Per Parke B., 12 Mees. & W. 105.

(*b*) *Belcher et al.* v. *Magnay et al.*, 12 Mees. & W. 102.

(*c*) *Hall et al.* v. *Wallace*, 7 Mees. & W. 353.

(*d*) *Pewtress et al.* v. *Annan*, 9 Dowl. 828. And see *Thomas et al.* v. *Desanges et al.*, 2 B. & A. 826.

(*e*) *Smallcombe* v. *Olivier*, 13 Mees. & W. 77.

(*f*) Id. *Bartlett* v. *Tuchin*, 6 Taunt. 259.

(*g*) *Conway et al.* v. *Nall*, 1 M. Gr. & S. 643.

judgment, the goods were seized after a secret act of bankruptcy and before fiat, but not sold until after fiat: it was holden that the execution could not be sustained as against the assignees; the stat. 2 and 3 Vict., c. 29, did not repeal the 6 G. 4, c. 16, s. 108, or in any manner render such an execution valid as against assignees (*h*). And the same is the law, where the seizure is before the act of bankruptcy, but the sale not until after it (*i*). But if the sale be before the act of bankruptcy (*k*), though the money be not paid over until after it (*l*), the execution will be valid as against the assignees; for at the time of the act of bankruptcy, the plaintiff was no longer a creditor. And a sale to the execution creditor himself, by bill of sale from the sheriff, will have the same effect as a sale in any other manner (*m*). But by stat. 1 W. 4, c. 7, no judgment signed or execution issued on a judgment by default, in any action commenced adversely, and not by collusion for the purpose of fraudulent preference, shall be deemed or taken to be within stat. 6 G. 4, c. 16, s. 108.

Goods of an insolvent.] Where a vesting order is obtained against an insolvent debtor, before a writ of execution against him is issued, the writ cannot be executed; but if the writ issue to the officer, before the vesting order issues, although on the same day, it is otherwise (*n*). And after an insolvent has been adjudged to be discharged, no execution for any debt from which he has been discharged, can be executed against any property he may have (*o*), even in a joint action against him and others (*p*).

Goods of partners.] In the case of an execution against the goods of one of two partners, the officer may seize partnership property, but he can only sell that partner's undivided share of it (*q*); if he sell the shares of both, he must at least pay over to the other partner his share of the produce of the sale (*r*).

Goods assigned by bill of sale.] If a man make a bill of sale to another, of furniture or goods, by way of mortgage or

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(*h*) *Whitmore et al.* v. *Robertson*, 8 Mees. & W. 463. *Skey* v. *Carter et al.*, 11 Mees. & W. 571. *Cheston et al.* v. *Gibbs et al.* 12 *Id.* 111. *Graham et al.* v. *Wetherby et al.*, 14 Law J. 290, qb. And see *Whitmore et al.* v. *Black et al.*, 13 Id. 507.

(*i*) *Notley et al.* v. *Buck*, 8 B. & C. 160.

(*k*) *Wymer* v. *Kemble*, 6 B. & C. 479.

(*l*) *Morland et al.* v. *Pellatt*, 8 B. & C. 722.

(*m*) *Wymer* v. *Kemble*, supra.

(*n*) *Woodland et al.* v. *Fuller et al.*, 11 Ad. & El. 859.

(*o*) 1 & 2 Vict. c. 110, s. 91.

(*p*) *Raynes et al.* v. *Jones et al.*, 11 Law J. 62, ex.

(*q*) *Johnson et al.* v. *Evans et al.*, 7 Man. & Gr. 240.

(*r*) *Eddie* v. *Davidson*, 2 Doug. 650. See *Chapman* v. *Koops*, 3 B. & P. 289. *Garbett* v. *Veale et al.*, 5 Q. B. 408.

security for money lent or goods sold to him, and by the deed he is to remain in possession until default made in the payment: such furniture or goods cannot be seized under an execution at the suit of another creditor (*s*). But if the bill of sale be absolute, and not by way of mortgage, and the vendor be allowed to remain in possession, then, although it may be valid as between the parties, it is not so as against the creditors (*t*), unless the bill of sale be by the sheriff under an execution (*u*), or that the sale were by public auction (*v*), or the transfer of property were in some other manner notorious; or unless the sale were made with the consent or privity of the party seeking to impugn it (*w*). Also, where a man, upon his marriage, in consideration thereof and of £10,000, his wife's portion, conveyed his real estate, and also his household goods, (his real estate not being deemed an adequate settlement,) to trustees, in trust for himself for life, remainder to his wife for life, remainder to the issue, &c., and continued in possession after the marriage: it was holden that these household goods could not be taken in execution under a *fi. fa.* against the husband, even at the suit of one who was a creditor at the time of the settlement (*x*). But wearing apparel, &c., of a wife, though bought by her with money settled to her separate use, vests in her husband, and may be seized and sold under an execution against him (*y*). So, if the debtor have fraudulently assigned his goods to another, for the purpose of defeating the execution, they may be seized and sold under the execution against the debtor; but otherwise where the assignment is for a valuable consideration, and not fraudulent against creditors within stat. 13 El. c. 5 (*z*).

Rescue of goods taken.] If any rescue shall be made or attempted to be made of any goods levied under the process of the court,—or if any officer or bailiff of the court be assaulted while in the execution of his duty,—the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the court, or before a justice of the peace, as hereinafter provided (*a*); and it shall be lawful for the

(*s*) *Martindale* v. *Booth*, 3 B. & Ad. 598. *Steward* v. *Lambe*, 1 Brod. & B. 506, 4 Moore, 281. And see *Ladbroke* v. *Crickett*, 2 T. R. 649.

(*t*) *Paget* v. *Perchard*, 1 Esp. 205. *Edwards* v. *Harben*, 2 T. R. 537. *Wordall* v. *Smith*, 1 Camp. 333.

(*u*) *Watkins* v. *Birch*, 4 Taunt. 823. *Kidd* v. *Rawlinson*, 2 B. & P. 59. *Jezeph* v. *Ingram*, 8 Taunt. 838. *Latimer* v. *Batson*, 4 B. & C. 652.

(*v*) *Wooderman* v. *Baldock*, 8 Taunt. 676, Moore, 11. *Leonard* v. *Baker*, 1 M. & S. 251.

(*w*) *Steel* v. *Brown*, 1 Taunt. 381.

(*x*) *Cadogan* v. *Kennet*, Cowp. 432.

(*y*) *Carne* v. *Price et al.*, 7 Mees. & W. 183.

(*z*) *Gale* v. *Williamson*, 8 Mees. & W. 405.

(*a*) See stat. s. 130, &c., *post*.

bailiff of the court, or any peace officer, in any such case, to take the offender into custody (with or without warrant), and bring him before such court or justice accordingly (*b*).

Goods how sold.] No sale shall be had of goods taken in execution, until after the end of five days at least next following the day on which the goods shall have been taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods they are (*c*).

And until such sale, the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person, approved by the high bailiff, to be put in possession by the bailiff (*d*).

The high bailiff may, from time to time, as he shall think proper, appoint such and so many persons for keeping possession,—and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act,—as shall appear to him to be necessary, and may direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties, without injury or oppression; and the judge or high bailiff may dismiss any person, broker or appraiser, so appointed (*e*).

And no goods taken in execution under this Act, shall be sold, for the purpose of satisfying the warrant of execution, except by one of the brokers or appraisers so appointed (*f*).

And such broker or appraiser shall be entitled to have, out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty; and for advertisements, catalogues, sale, and commission, and delivery of goods, one shilling in the pound on the net produce of the sale (*g*).

Care should be taken not to sell more than is sufficient to satisfy the execution (*h*).

Rent deducted.] The stat. 8 *Anne*, c. 17, relative to the landlord's remedy for rent where the goods of the tenant are taken in execution, shall not apply to goods taken in execution under this Act; but the landlord of any tenement, in which any such goods shall be so taken in execution, shall be entitled (by any writing under his hand or under the hand of his agent, to be delivered to the bailiff or officer making the levy, which writing shall state the terms of the holding and

(*b*) Stat. s. 114.
(*c*) Id. s. 106.
(*d*) Id.
(*e*) See stat. s. 106.
(*f*) Id.
(*g*) Id.
(*h*) See *Aldred et al.* v. *Constable et al.*, 6 Q. B. 370.

the rent payable for the same,) to claim any rent in arrear then due to him,—not exceeding the rent of four weeks where the tenement is let by the week,—and not exceeding the rent accruing due in two terms of payment where the tenement is let for any other term less than a year,—and not exceeding in any case the rent accruing due in one year (*i*).

The following may be the

Landlord's claim for Rent, under an Execution.

To the high bailiff of the county court of ——, at ——, and to his bailiffs making the levy hereinafter mentioned.

Whereas I have been informed that you have taken the goods of C. D., in the house occupied by him at ——, under and by virtue of a warrant of execution issued from the said county court of ——, at ——. Now I hereby give you notice that the said C. D., holds the said house with the appurtenances, as tenant to me from year to year from the —— day of ——, 184—, at the yearly rent of ——, payable quarterly, on ——; and that I now claim the sum of £——, as due to me for [two] quarters of the said rent due and ending on ——, and now in arrear and unpaid. Dated, &c. (*k*). *J. S.*

In case of such claim being so made, the bailiff or officer making the levy shall distrain—as well for the amount of the rent so claimed, and the costs of such additional distress,—as for the amount of the money and costs for which the warrant of execution issued,—and shall not proceed to sell the same or any part thereof within five days next after such distress taken (*l*).

And if any replevin shall be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the surplus of such sale (if any), and also the residue of the goods, shall be returned, as in other cases of distress for rent, and replevin thereof (*m*). From this it might be imagined that the judgment creditor was to be preferred to the landlord, and that the excess only, after payment of the execution, was applicable to the rent. But that is not so: the statute contemplates two distresses, the first for the rent, the other under the execution; and the goods taken under the latter being sold, and applied to the satisfaction of the execution, the balance (if any) remaining, and the goods taken under the first distress, are then delivered up under the replevin.

(*i*) Stat. s. 107. As to the mode of proceeding in the superior courts under the stat. 8 Anne, c. 17, see 2 Arch. Pr. 131.

(*k*) This form is not in the schedule to the rules.

(*l*) Stat. s. 107.

(*m*) Id.

For every such additional distress for rent in arrear, the high bailiff is to have, for making the distress and keeping possession thereof, the fees allowed in cases of distress by stat. 57 Geo. 3, c. 93, instead of the ordinary fees allowed by this Act (*m*).

If the landlord's claim be disputed, it may be examined and decided upon, on an interpleader summons, as directed, *post*, p. 101.

Warrant returned, and money paid into court.] At every court, or at such other times as the judge shall require, the high bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done, since his last return, under every process of execution which he shall have been required to execute (*n*). And every high bailiff, required to execute any warrant of execution issuing out of any other court, shall make a return to such last-mentioned court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof (*o*).

Every bailiff, levying or receiving any money by virtue of process issuing out of the court of which he is bailiff, shall, within three days after the receipt thereof, pay over the same to the clerk of such court (*p*). And if any high bailiff shall have levied or received any money under process issuing out of any other court, he shall within three days after the receipt thereof, pay over such money, retaining the fees of execution, to the high bailiff of such last-mentioned court (*q*).

And where any money is paid into court, under any execution or order of the court,—if the clerk receive notice from any party, of his intention to apply to the court to set aside the execution or order under which such money is paid into court,—the clerk shall retain the same, until after such application has been determined, or until the judge shall otherwise order (*r*).

2. *Execution out of the District.*

How and by whom.] Where a warrant of execution shall have issued against the goods and chattels of any party, and such goods and chattels shall be out of the jurisdiction of the court, it shall be lawful for the high bailiff of the court to send such warrant of execution to the clerk of any other court constituted under this Act, within the jurisdiction of which

(*m*) Stat. s. 107. See 1 Arch. J.P. p. 429.
(*n*) Rule 45.
(*o*) Rule 47.
(*p*) Rule 48.
(*q*) Rule 49.
(*r*) Rule 22.

such goods and chattels shall then be or be believed to be, with a warrant thereto annexed, under the hand of the high bailiff and seal of the court from which the original warrant issued, requiring execution of the same (*s*).

And the clerk of the court, to which the same shall be sent, shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court; and thereupon such last-mentioned high bailiff shall be authorized and required to act in all respects as if the original warrant of execution had been directed to him by the court of which he is the high bailiff (*t*).

Warrant returned, and money paid into court.] And the high bailiff who shall so execute the said warrant, shall [forthwith on the execution thereof (*u*)], return to the high bailiff of the court from which the same originally issued, what he shall have done in execution of such process (*v*).

And in case a levy shall have been made, the high bailiff, who shall have made the same, shall pay over all monies received in pursuance of the warrant [within three days after the receipt thereof (*w*)], to the high bailiff of the court from which the same shall have originally issued, retaining the fees for the execution (*x*).

All constables and other peace officers shall be aiding and assisting, within their respective districts, in the execution of such warrant.

3. *Interpleader.*

Summons, how and in what cases.] If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under this Act, or in respect of the proceeds or value thereof,—by any landlord for rent,—or by any person not being the party against whom such process has issued—it shall be lawful for the clerk of the court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons, calling before the said court as well the party issuing such process, as the party making such claim (*y*). And thereupon any action which shall have been brought in any of Her Majesty's superior courts of record, or in any local or inferior court, in respect of such claim, shall be stayed; and the court in which such action shall be brought, or any judge thereof, on proof of the

(*s*) Stat. s. 104.
(*t*) Id.
(*u*) Rule 47, *supra.*
(*v*) Stat. s. 104.
(*w*) Rule 49, *supra.*
(*x*) Stat. s. 104.
(*y*) Id. s. 118.

issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons (*z*).

The following is the form of the

Summons to the Plaintiff.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas ——, *of* ——, *hath made a claim to certain goods and chattels* [or *money* &c., or *for certain rent due*, &c.], *which have been seized and taken in execution under and by virtue of process issuing out of this court, in this action; you are therefore hereby summoned and required to be and appear before the judge of the said court, at* ——, *on* —— *at the hour of* —— *in the forenoon, when the said claim will be adjudicated upon, and such order made thereupon as to the judge shall seem fit.*

Given under the seal of the court, this —— *day of* ——, 18—.
——, *Clerk of the said court.*

To ——, *the above-named plaintiff.*

Note.—The claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the clerk of the court four days before the day of hearing.

Summons to the Claimant.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

You are hereby summoned and required to appear at a court to be holden on —— *next, at, &c., at the hour, &c., touching a claim made by you to certain goods and chattels,* [or *monies, &c.*, or *for certain rent due on* ——], *seized and taken in execution under process issued out of this court, in this action, and in default of your then establishing such claim, the said goods and chattels will be sold* [or *the said monies, &c., paid over*] *according to the exigency of the said process; and take notice, that you are hereby required, five days before the said* —— *day of* ——, *to deliver to the officer in charge of the said process, or to leave at my office at* ——, *a particular of the*

(*z*) Stat. s. 118.

goods or chattels so claimed by you and of the grounds of your claim [or *of the amount of rent claimed, and for what period due.*

Given under the seal of the court, this —— day of ——, 18—.
To ——, of ——. *——, Clerk of the said court.*

These summonses shall be served in such time and manner as hereinbefore directed for a summons to appear to a plaint, and the claimant shall be deemed the plaintiff, and the execution creditor the defendant (*a*).

The claimant shall, five clear days before the day on which the summonses are returnable, deliver to the officer making the application, or leave at the office of the clerk of the court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or (in case of a claim for rent) of the amount thereof, and for what period the same is claimed to be due (*b*).

The following may be the

Particulars of Claim, upon an Interpleader Summons.

Take notice that I claim [*certain of*] *the goods and chattels taken in execution in the house of C. D., at ——, under a warrant of execution issued from the county court of ——, at ——, at the suit of A. B. against the said C. D.; and that the particulars of the goods and chattels so claimed by me are as follows, that is to say:* [here set out a list and description of the articles]. *And take notice that the ground of my said claim is* [here state it] (*c*). *R. S.*

Dated, &c.

To ——, clerk of the said court, and
To ——, bailiff of the said court.

The judge of the court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such order shall be enforced in like manner as any order made in any suit brought in such court (*d*).

The following is the form of the

Order.

No.—. In the county court of ——, at ——.
(Seal.) *Between A. B., plaintiff,*
and
C. D., defendant.

It is hereby ordered, touching the claim of E. F. to certain goods and chattels [or *monies, &c.*] *seized and taken in exe-*

(*a*) Rule 39.
(*b*) Rule 39.
(*c*) This form is not in the schedule to the rules.
(*d*) Stat. s. 118.

cution in this action, which said E. F. has been duly summoned to support his claim at this court, that the said goods and chattels [or *monies*, &c. or *part thereof, to wit*—specifying them] *are the property of the said E. F.* [or *of the said defendant*, as the case may be] ; *and it is further ordered, that the costs of this proceeding, amounting to* ——, *be paid by the said* ——, *to the clerk of the court, at his office in* ——, *for the use of the said* ——, *on or before the* —— *day of* ——.

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.

——, *Clerk.*

Office hours, from 10 *till* 4.

SECTION VIII.

Commitment for Fraud.

After Judgment.

Summons and service.] Any party who has obtained an unsatisfied judgment or order in any court holden by virtue of this Act, or under any Act repealed by this Act, for the payment of any debt or damages or costs, may obtain a summons from the county court within the limits of which the other party shall then dwell or carry on his business, requiring him to appear, to answer such things as shall be named in such summons (*a*).

The following is the form of the

Summons after Judgment.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas at a county court held at, &c., on, &c., the above-named plaintiff obtained a judgment [or *order*] *against you for the payment of* ——, *for* ——, *which said judgment* [or *order*] *still remains unsatisfied, you are therefore hereby summoned to appear at the county court to be holden at, &c., on, &c., at the hour, &c., to be then and there examined by the judge of the said court, touching your estate and effects, and the manner and circumstances under which you contracted the said debt* [or *incurred the damages* or *liability*] *which was the subject of the action in which the said judgment was obtained against you, and as to*

(*a*) Stat. s. 99.

the means and expectation you then had, and as to the property and means you still have of discharging the said debt [or *damages* or *liability*,] *and as to the disposal you may have made of any property. And take notice, that if you do not appear in obedience to this summons, you may, by order of this court, be committed to the common gaol,* [or other prison of the court.]

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.

——, *Clerk.*

	£	s.	d.
Amount of judgment or order			
Costs of this summons			

It must be served personally upon the person to whom it is directed (*b*). And it must be served not less than three clear days before the day on which the party is required to appear: Provided always, that service of such summons at any time before the time appointed for the appearance of such party, may be deemed by the judge to be good service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the court (*c*).

Appearance and examination.] If he shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects,—and the manner and circumstances under which he contracted the debt, or incurred the damages or liability, which is the subject of the action in which judgment has been obtained against him;—and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability,—and as to the disposal he may have made of any property (*d*).

Examination of witnesses.] The person obtaining such summons, and all other witnesses whom the judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as above mentioned (*e*). And the witnesses may be summoned, in the manner directed *ante*, p. 44.

Not appearing.] If the party so summoned shall not attend, as required by such summons, and shall not allege a sufficient excuse for not attending, it shall be lawful for the judge, if he shall think fit, to order that any such party may be com-

(*b*) Stat. s. 98.
(*c*) Rule 38.
(*d*) Stat. s. 98.
(*e*) Id.

mitted to the common gaol or house of correction of the county, district or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the court,—for any period not exceeding forty days (*f*).

The following may be the form of the

Order for the Commitment of Defendant, for not appearing.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas at a county court holden at —— *on* ——, *the above-named plaintiff, by the judgment of the said court, in a certain suit wherein the said court had jurisdiction, recovered against the above-named defendant the sum of* —— *for his debt* [or *damages*, as the case may be], *together with the sum of* —— *the costs of the said suit; and thereupon it was then and there ordered by the said court, that the said defendant should pay to the said plaintiff the said sums of* —— *and of* ——, *so recovered against the said defendant as aforesaid, on or before* ——: *and whereas the said defendant not having paid the said sums of* —— *and of* —— *pursuant to the said order, upon the application of the said plaintiff a summons was duly issued from and out of the said court against the said defendant, by which said summons the said defendant was required to appear at the said county court of* —— *at* ——, *on* ——, *to answer such questions as might be put to him touching* [as in the summons:]* *and whereas it was duly proved upon oath, at the said last mentioned court, that the said defendant was personally served with the said summons: and whereas the said defendant did not attend as required by such summons, or allege any sufficient excuse for not so attending: therefore I, S. W., Esquire, judge of the said court, do order that the said defendant shall be committed, for the term of* —— *days, to* ——, *according to the form of the statute in that case made and provided, or until he shall be discharged by due course of law.* (g)

S. W.

Given under the seal of the court, this —— *day of* ——.

—— *Clerk of the said court.*

In what cases, committed.] If the party so summoned, and attending, shall refuse to be sworn, or to disclose any of the

(*f*) Stat. s. 99.

(*g*) This form is not in the schedule to the rules.

things aforesaid,—or if he shall not make answer touching the same to the satisfaction of the judge,—or if it shall appear to the judge, either by the examination of the party, or by any other evidence, that such party (if a defendant), in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences, by means of fraud or breach of trust,—or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same,—or shall have made or caused to be made any gift, delivery or transfer of any property, or shall have charged, removed or concealed the same, with intent to defraud his creditors or any of them,—or if it shall appear to the satisfaction of the judge of the said court, that the party so summoned has then, or had since the judgment obtained against him, sufficient means or ability to pay the debt or damages or costs so recovered against him, either altogether or by any instalment or instalments which the court shall have ordered, *and* if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided:—it shall be lawful for such judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the court, for any period not exceeding forty days (*g*).

Upon this section the following case has been very recently decided. On examination of a defendant upon summons after judgment, it appeared to the judge that he had the means of paying the debt and costs, and he made an order that he should pay them by monthly instalments; and upon this defendant making default in one of the instalments, the judge, upon an *ex parte* application of the plaintiff, and without calling the defendant before him, made an order for his imprisonment, and he was accordingly taken under a warrant, and imprisoned; but the court of Common Pleas, upon his being brought up by habeas, ordered him to be discharged, holding that the imprisonment in this case being by way of punishment, the warrant ought not to have issued without giving the defendant an opportunity of offering matter in defence or mitigation.—*Ex p. Kinning*, 4 *June*, 1847.

The following may be the form of the

Order for the Commitment of Defendant, after Judgment.

Same as the last form, to the asterisk;*] *And whereas the defendant now duly appearing at the said court, pursuant to the*

(*g*) Stat. s. 90.

said summons, is examined touching [as in the summons:] *and whereas it appeareth upon such examination to the satisfaction of me, S. W., judge of the said court, that* [here insert the particular ground of commitment:] *therefore I hereby order that the said defendant shall be committed for the term of —— days to ——, according to the form of the statute in that case made and provided, or until he shall be discharged by due course of law.* *S. W.*

Given under the seal of the court, this —— day of —— (*h*).

—— Clerk of the said court.

The like, at the trial.] And in every case, where the defendant in any suit shall have been personally served with the summons to appear, or shall personally appear, at the trial of the same, the judge at the hearing of the cause, or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties, touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained, in case the plaintiff had obtained a summons for that purpose after the judgment obtained, as above mentioned (*i*).

The following may be the form of the

Order for the Commitment of the Defendant, at the Trial.

No. —. In the county court of ——, at ——.

Between A. B., plaintiff,

(Seal.) *and*

C. D., defendant.

Whereas at a court now holden at ——, on this —— day of ——, in the year of our Lord ——, the above-named plaintiff, by the judgment of the said court in a certain suit wherein the said court had jurisdiction, recovered against the above named defendant the sum of —— for his debt [or *damages*], *together with the sum of —— the costs of the said suit; and thereupon it was ordered by the said court that the said defendant should forthwith pay to the said plaintiff the said sums of —— and of —— so recovered against the said defendant: And whereas the said defendant, having personally appeared to the said summons, and being now present here in court, is, upon the application of the said plaintiff, now here examined touching* [as in the summons]: *and whereas it now appears upon such examination, to the satisfaction of me, S. W., the judge of the said court, that* [here insert the particular ground of commitment]: *therefore I the said S. W., judge of the said court as aforesaid, do hereby*

(*h*) This form is not in the schedule to the rules.

(*i*) Stat. s. 101.

order and adjudge the said defendant to be committed for the term of —— days to ——, or until he shall be discharged by due course of law. *S. W.*

Given under the seal of the court, this —— day of —— (j).

—— Clerk of the said court.

Warrant of commitment, and how executed.] Whenever any order of commitment shall thus be made, the clerk of the court shall issue, under the seal of the court, a warrant of commitment, directed to one of the bailiffs of any county court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all constables and other peace officers within their several jurisdictions, shall aid in the execution of every such warrant (k).

The following are the forms:

Warrant of Commitment, for not Appearing.

No. —. In the county court of ——, at ——.

Between A. B., plaintiff,

and

C. D., defendant.

To the high bailiff and the other bailiffs of the said court, and all constables and peace officers within the jurisdiction of the said court, and to the governor or keeper of ——.

Whereas at a county court duly holden at ——, on the —— day of ——, in the year of our Lord 18—, the above-named plaintiff, by the judgment of the said court, in a certain suit wherein the said court had jurisdiction, recovered against the above-named defendant the sum of £—— for his debt [or *damages,* as the case may be], *together with the sum of £—— the costs of the said suit, and thereupon it was then and there ordered by the said court, that the said defendant should pay to the said plaintiff the said sums of £—— and £—— so recovered against the said defendant as aforesaid, on or before the —— day of, &c.* [as the case may be]: *And whereas the said defendant not having paid the said sums of £—— and £—— pursuant to the said order, upon the application of the said plaintiff a summons was duly issued from and out of the said court against the said defendant, by which said summons, the said defendant was required to appear at the said county court of ——, at ——, on the —— day of, &c., to answer such questions as might be put to him touching* [set out as in the summons]: *And whereas it was duly proved upon oath at the said last-mentioned court,*

(j) This form is not in the schedule to the rules.

(k) Stat. s. 102.

that the said defendant was personally served with the said summons: And whereas the said defendant did not attend as required by such summons, or allege any sufficient excuse for not so attending, and thereupon it was ordered by the judge of the said court, that the said defendant should be committed for the term of —— days, to the —— in the ——, according to the form of the statute in that case made and provided, or until he should be discharged by due course of law: These are therefore to require you, the said high bailiff, bailiffs, and others, to take the said defendant, and to deliver him to the governor, [or *keeper,* &c.]: *and you the said governor* [or *keeper,* &c.] *are hereby required to receive the said defendant, and him safely to keep in the ——, for the term of —— days from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.*

Given under the seal of the court, this —— day of ——, 18—.

(Seal.)

——, *Clerk of the said court.*

Warrant of Commitment after Judgment.

No. —. *In the county court of ——, at ——.*

Between A. B., plaintiff,

and

C. D., defendant,

To the high bailiff and the other bailiffs of the said court, and all constables and peace officers within the jurisdiction of the said court, and to the governor or keeper of ——.

Whereas at a county court duly holden at ——, on the —— day of ——, in the year of our Lord 18—, *the above named plaintiff, by the judgment of the said court, in a certain suit wherein the said court had jurisdiction, recovered against the above named defendant the sum of £—— for his debt* [or *damages,* as the case may be], *together with the sum of £—— the costs of the said suit; and thereupon it was then and there ordered by the said court, that the said defendant should pay to the said plaintiff the sums of £—— and £——, so recovered against the said defendant as aforesaid, on or before the —— day of, &c.* [as the case may be]: *And whereas the said defendant not having paid the said sums of £—— and £——, pursuant to the said order, upon the application of the said plaintiff a summons was duly issued from and out of the said court against the said defendant, by which said summons, the said defendant was required to appear at the said county court of ——, at ——, on the —— day of, &c., to answer such questions as might be put to him touching* [set out as in the summons]: *And whereas the defendant, having duly appeared at the said court pursuant to the said summons, was examined touching, &c.* [as

in the summons] : *And whereas it appeared upon such examination to the satisfaction of the judge of the said court, that* [here insert the particular ground of commitment], *and thereupon it was ordered by the said judge, that the said defendant should be committed for the term of —— days to the —— in the ——, according to the form of the statute in that case made and provided, or until he should be discharged by due course of law: These are therefore to require you, the said high bailiff, bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c.* [or *keeper*, &c.] ; *and you the said governor,* [or *keeper*, &c.] *are hereby required to receive the said defendant, and him safely to keep in the —— for the term of —— days from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.*

Given under the seal of the court, this —— day of ——, 18—.

(Seal.)

——, *Clerk of the said court.*

Warrant of Commitment, upon Examination at the Trial.

No. —. *In the county court of ——, at ——.*

Between A. B., plaintiff,

and

C. D., defendant.

To the high bailiff, and the other bailiffs of the said court, and all constables and peace officers within the jurisdiction of the said court, and to the governor or keeper of the gaol at ——.

Whereas at a court now holden at ——, on this —— day of ——, in the year of our Lord 18—, *the above-named plaintiff, by the judgment of the said court, in a certain suit wherein the said court had jurisdiction, recovered against the above-named defendant the sum of £——, for his debt* [or *damages*], *together with the sum of £——, the costs of the said suit; and thereupon it was then and there ordered by the said court, that the said defendant should forthwith pay to the said plaintiff the said sums of £—— and £——, so recovered against the said defendant: And whereas the said defendant, having personally appeared to the said summons, and being present in court, was, upon the application of the said plaintiff, then and there examined touching* [set out as in the summons] : *And whereas it appeared upon such examination, to the satisfaction of the judge of the said court, that* [here insert the particular ground of commitment] : *and thereupon the said judge of the said court, by a certain order bearing date the —— day of ——, did order and adjudge the said defendant to be committed for the term of —— days to the ——, in the ——, or until he should be discharged by due course of law: These are therefore to require*

you, the said high bailiff, bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c. [or *keeper, &c.*]; *and you the said governor* [or *keeper &c.*] *are hereby required to receive the said defendant, and him safely to keep in the* ——, *&c., for the term of* —— *days from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.*

Given under the seal of the court, this —— *day of* ——, 18—.

(Seal.)

——, *Clerk of the said court.*

The gaoler or keeper of every gaol, house of correction and prison mentioned in any such order, shall be bound to receive and keep the defendant therein, until discharged under the provisions of this Act, or otherwise by due course of law (*l*).

And no protection, order or certificate granted by any court of bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last-mentioned order (*m*).

Warrant, how executed out of the district.] In all cases, where a warrant for the commitment of any party shall have been made under this Act, and such party shall be out of the jurisdiction of the court, the high bailiff may send such warrant of commitment to the clerk of any court constituted under this Act, within the jurisdiction of which such party shall then be or be believed to be, with a warrant thereto annexed, under the hand of the high bailiff and seal of the court from which such original warrant issued, requiring execution of the same (*n*).

And the clerk of the court, to which the same shall be sent, shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court; and thereupon such last-mentioned high bailiff shall be authorized and required to act in all respects, as if the original warrant of commitment had been directed to him by the court of which he is the high bailiff (*o*).

And such last-mentioned high bailiff shall [forthwith on the execution of such warrant (*p*)] return to the high bailiff of the court from which the same originally issued, what he shall have done in the execution of such process (*q*).

And when the party shall have been apprehended, he shall be forthwith conveyed, in the custody of the bailiff or officer apprehending him, to the gaol or house of correction, or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time men-

(*l*) Stat. s. 102, and see s. 49.
(*m*) Id.
(*n*) Id. s. 104.
(*o*) Id. s. 104.
(*p*) Rule 47.
(*q*) Stat. s. 104.

tioned in the warrant of commitment, unless sooner discharged under the provisions of this Act (*r*).

And all constables and other peace officers shall be aiding and assisting, within their respective districts, in the execution of such warrant (*s*).

Costs.] The costs of the summons, and all proceedings thereon, shall be deemed costs in the cause (*t*).

Return.] At every court, or at such other times as the judge shall require, the high bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done since his last return under every process of commitment, which he shall have been required to execute (*u*).

And every high bailiff, required to execute any warrant of commitment issuing out of any other court, shall make a return to such last-mentioned court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof (*v*).

On payment of debt, &c., defendant discharged.] Any person, imprisoned under this Act, who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs, remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs,—shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the clerk of the court, by the leave of the judge of the court in which the order of imprisonment was made (*w*).

The following is the form of the

Certificate of Payment.

In the county court of ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

I do hereby certify that the above-named defendant, who was committed to your custody under and by virtue of a certain warrant of commitment under my hand and the seal of the said court, and bearing date the —— *day of* ——, *for the space of* —— *days, has, since the issuing of the said warrant of commitment, to wit, on the* —— *day of* ——, *current* [or *last*

(*r*) Stat. s. 104.
(*s*) Id.
(*t*) Id. s. 98.
(*u*) Rule 45.
(*v*) Rule 47.
(*w*) Stat. s. 110.

past], *paid and satisfied the debt* [or *damages*, or *the instalments of the said debt* or *damages*,] *for the non-payment whereof he was so committed as aforesaid, together with all fees, costs, and charges due and payable by him in respect thereof; and that the said defendant may in respect of such warrant of commitment be forthwith discharged from and out of your custody.*

By leave of the judge of the said court.

——, *Clerk of the said court, at* ——.

Given under the seal of the said court, this —— *day of* ——, 18—.

To the governor or keeper of the —— *gaol at* ——.

Imprisonment not a satisfaction of the debt.] No imprisonment under this Act, shall in any manner operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained,—or protect the defendant from being anew summoned and imprisoned for any fraud or other default, rendering him liable to be imprisoned under this Act,—or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, —in the same manner as if such imprisonment had not taken place (*x*).

The judge may rescind or alter his original order.] It shall however be lawful for the judge of the court, before whom such summons shall be heard, if he shall think fit, whether he shall make an order for the commitment of the defendant or not, to rescind or alter any order that shall have been previously made against any defendant so summoned before him, for payment by instalments or otherwise, of any debt or damages recovered,—and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by instalments, or in any other manner as such judge may think reasonable and just (*y*).

SECTION IX.

Records.

The clerk of every court holden under this Act, shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which

(*x*) Stat. s. 103. (*y*) Id. s. 100.

shall be kept at the office of the court; and such entries in the said book, or a copy thereof bearing the seal of the court, and purporting to be signed and certified as a true copy by the clerk of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries, and of the proceedings referred to by such entry or entries, and of the regularity of such proceedings, without any further proof (*z*).

SECTION X.

Removal of Cause; Writ of Error.

Removal of cause.] No plaint entered in any court holden under this Act, shall be removed or removeable from the said court into any of Her Majesty's superior courts of record, by any writ or process, unless the debt or damage claimed shall exceed 5*l.*, and then only by leave of a judge of one of the said superior courts, in cases which shall appear to the court fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit (*a*).

The following may be the form of the

Bond, on Removing Plaint in ordinary Cases.

Know all men by these presents, that we, C. D. of ——, maltster, E. F. of ——, butcher, and G. H. of ——, carpenter, are jointly and severally held and firmly bound to A. B. in the sum of —— pounds of lawful money of Great Britain, to be paid to the said A. B., his certain attorney, executors or administrators; for which payment well and truly to be made, we bind ourselves and each and every of us, our and each and every of our heirs, executors and administrators firmly by these presents, sealed with our seals. Dated this —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, and in the year of our Lord 184—.

Whereas a certain action of —— was on —— commenced in the county court of —— at ——, wherein A. B. was plaintiff and C. D. defendant, and wherein the debt [or *damage*] *claimed exceeded the sum of £5; and whereas the defendant C. D. is desirous to remove the same into the court of* [*Queen's Bench at Westminster*], *and the Honourable Mr. Justice ——, by his order bearing date the ——* [here recite the order, but in the past tense]: *Now the condition of this obligation is such, that if the above bounden C. D., in case a verdict or judgment shall pass against him in the said court of* [*Queen's Bench,*] *shall pay*

(*z*) Stat. s. 111. (*a*) Id. s. 90.

unto the said A. B. the amount of the debt and costs so to be recovered against him by such verdict or judgment, then this present obligation to be void, otherwise to remain in full force and virtue (*a*). *C. D.* [L.S.]

Signed, sealed, and delivered in the presence of ——. *E. F.* [L.S.] *G. H.* [L.S.]

Writ of error.] No judgment or execution shall be stayed, delayed or reversed, upon or by any writ of error, or supersedeas thereon, to be sued for the reversing of any judgment given in any court holden under the provisions of this Act (*b*).

Chapter II.

Actions by and against Executors or Administrators.

In what cases.] An executor or administrator may sue and be sued in any court holden under this Act, in like manner as if he were a party in his own right; and the judgment and execution shall be such, as in the like case would be given or issued in any superior court (*c*). If by this is meant that the executor or administrator may bring any action which his testator or intestate might have brought, this clause makes a serious alteration in the law; for, independently of this clause, there are many actions a man may bring in his own right, which his executor or administrator cannot (*d*).

Upon a judgment for or against testator, &c.] Where a judgment has been given for or against a person deceased,—his executors or administrators may sue and be sued upon the judgment (*e*); no execution can issue by or against them upon such judgment, but there must be a plaint and summons upon it, and thereupon the proceedings shall be the same as in ordinary actions (*f*).

In an action by or against the executor, &c.] The whole of the proceedings in an action by an executor or administrator, are the same as in ordinary cases; and if judgment be given against him for costs, the plaintiff will be obliged to pay them out of his own monies (*g*).

But in an action against an executor or administrator, the

(*a*) This form is not in the schedule to the rules.
(*b*) Stat. s. 108.
(*c*) Id. s. 66.
(*d*) See 1 Saund. 216, n. 1. 3 & 4 Will. 4, c. 42, ss. 2, 14.
(*e*) Rule 26.
(*f*) Rule 27.
(*g*) 3 & 4 Will. 4, c. 42, s. 31.

ordinary judgment for plaintiff is, that the defendant shall pay the debt or damages and costs, to be levied out of the goods of the deceased in the defendant's hands; and as to the costs, if there be no such goods, then to be levied out of the goods of such executor or administrator (*h*).

See the form of the

Warrant of Execution against an Executor or Administrator.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., Executor of E. F., deceased, defendant.

Whereas at a court duly holden at ——, *within the jurisdiction of the said court, on the* —— *day of* ——, *before* ——, *the judge of the said court, the said plaintiff, by the consideration and judgment of the said court, recovered against the said defendant, as executor* [or *administrator*] *of E. F., deceased, the sum of £*——, *for a certain debt before that time due and owing to the said plaintiff by the said E. F., in his lifetime, together with the sum of £*—— *for his costs of suit, by the said plaintiff in that behalf expended; And whereas the said defendant, by an order of the said court, bearing date the day and year aforesaid, was ordered to pay the said debt* [or *damages*], *together with the said costs, amounting together to the sum of £*——
[state the time for payment]: *And whereas the said sum of* —— *has not been paid to the said plaintiff, pursuant to the said order: These are therefore to require and order you, forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said E. F. in his lifetime, in the hands of the said defendant to be administered, wheresoever they may be found within the district of this court, the said sum of* ——, *together with the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said E. F. in his lifetime, which may there be found, or such part, or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, if the said defendant hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods and chattels, money, or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes,*

(*h*) Rule 29.

bonds, specialties, or securities for money of the said defendant, the sum of £—— for the costs and charges first above mentioned, and the costs of this execution, and of levying the same.

Given under the seal of the court, this —— day of ——, 18—.

By the court.

——, Clerk of the said court.

To ——, high bailiff of the said court, and the other bailiffs thereof.

	£	s.	d.
Debt.....			
Costs.....			
Execution....			

Notice.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

So, where, in an action against executors or administrators, the defence is that they are not executors or administrators, —or is founded on some matter or thing arising since the death of the testator or intestate, as for instance, a release,—if judgment be given against them, it shall be that the debt or damages and costs be levied of the goods of the testator, if the defendants have so much thereof in their hands to be administered; and if they have not, then of the goods of the defendant (*g*).

Where plene administravit is pleaded.] Where the defence is, that executors or administrators have fully administered, and it is adjudged by the court that they have assets not administered,—then the judgment shall be, that they pay the amount proved to be in their hands, out of the goods of the deceased in their hands, and judgment of assets *quando acciderint* as to the residue; and the judgment as to costs shall be, that they be levied of the goods of the testator if there be such goods, or if not, then upon the goods of the defendant (*h*).

Or if the sole defence be, that the defendants have fully administered, and judgment be for the defendants, it shall be, that the amount, found to be due, be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the judge (*i*).

(*g*) Rule 34. See 2 Arch. Pr. 264. (*h*) Rule 30. (*i*) Rule 31.

Judgment quando, &c., how enforced.] Where judgment has been given against executors or administrators, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may at any time proceed by plaint against them, suggesting that assets have come to their hands; and the court shall proceed and give judgment thereon,—if for the plaintiff, in the ordinary form above-mentioned,—or if for the defendants, they shall be entitled to costs (*k*).

Proceedings on a devastavit.] Where judgment has been given that the debt or damages and costs be levied of the goods of the deceased, and the plaintiff complains that the defendants have been guilty of a *devastavit*, inasmuch as no goods of the deceased are forthcoming to satisfy the execution issued,—then a summons may be taken out, in the following form or to the like effect (*l*):

Summons upon a Devastavit.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

A. B., plaintiff,
and
C. D., Executor of E. F., deceased, defendant.

You are hereby summoned to appear at a county court to be holden at ——, *on the* —— *day of* ——, *at the hour of* —— *in the forenoon, to answer the above-named plaintiff in an action of contract, for that you, the defendant, have withheld, wasted, and put to your own use, divers goods and chattels which were the property of E. F., deceased, at the time of his death, and which came to the hands of you, the defendant, as executor of the said E. F., to be administered, whereby the judgment recovered against you by the said plaintiff at this court* [or *at a county court held at* ——, *in the county of* ——, *on the* —— *day of* ——, as the case may be] *remains unsatisfied.*

And take notice—[&c. as in the form ante, p. 24, to the end.]

And thereupon, as in ordinary cases, the court shall proceed to the hearing and judgment; and if judgment be given against such executors or administrators, then it shall be, that they pay the debt or damages and costs, to be levied of the goods of the deceased, if they have so much thereof in their hands to be administered, and if they have not, then of the goods of the defendants (*m*).

(*k*) Rule 32. (*l*) Rule 33. (*m*) Rule 33.

The following is the form of the

Judgment against an Executor on a Devastavit.

No. —. *In the county court of* ——, *at* ——.
(Seal.) *Between A. B., plaintiff,*
and
C. D., Executor of E. F., deceased, defendant.

Upon the hearing of this cause, at a court holden at ——, *on the* —— *day of* ——, *it is adjudged, that the said defendant, being the executor of E. F., deceased, hath made away, wasted, and put to his own use, divers goods and chattels* [or *monies, &c.* as the case may be], *which were the property of E. F., deceased, at the time of his death, and which came to the hands of the said defendant as executor as aforesaid, to be administered, whereby a certain judgment recovered by the said plaintiff against the said defendant as executor as aforesaid, at a court held on the* —— *day of* ——, *remains unsatisfied, and that the said defendant do pay the sum of £*——, *recovered by the said judgment, together with the sum of £*—— *the costs of this suit, to the clerk of the court, at his office, on or before, &c.* [as the case may be] ; *and it is further adjudged, that if the said defendant make default in payment thereof, an execution shall issue to make and levy the said several sums of £*—— *and £*—— *of the goods and chattels of the said E. F., if the said defendant hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then to be made and levied of the proper goods and chattels of the said defendant.*

Given under the seal of this court, this —— *day of* ——, 18—
By the court.

Warrant of Execution on Judgment on a Devastavit.

No. —. *In the court of* ——, *at* ——.
(Seal.)
Between A. B., plaintiff,
and
C. D., Executor of E. F., defendant.

Whereas at a county court duly holden at ——, *within the jurisdiction of the said court, on the* —— *day of* ——, *before* ——, *the judge of the said court, it was adjudged that the said defendant, being the executor of E. F., deceased, had made away, wasted and put to his own use, divers goods and chattels* [or *monies,* &c. as the case may be] *which were the property of E. F., deceased, at the time of his death, and which came to the hands of the said defendant as executor as aforesaid to be ad-*

ministered, whereby a certain judgment recovered by the said plaintiff against the said defendant as executor as aforesaid, at a court held on the —— day of ——, remained unsatisfied; and that the said defendant should pay the sum of —— recovered by the said judgment, together with the sum of ——, the costs of that suit, to the clerk of the court, at his office, on or before [&c. as the case may be]; *and it was further adjudged that if the said defendant should make default in payment thereof, an execution should issue to make and levy the said several sums of —— and ——, of the goods and chattels of the said E. F., if the said defendant had so much thereof in his hands to be administered, and if he had not so much thereof in his hands to be administered, then to be made of the proper goods and chattels of the said defendant: And whereas the defendant hath made default in payment of the said several sums of —— and ——, and hath not paid the same or any part thereof, in pursuance of the said judgment: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said E. F. in his lifetime, in the hands of the said defendant to be administered, wheresoever they may be found within the district of this court, the said several sums of —— and ——, together with the costs of this execution, and also to seize and take any money, or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said E. F. in his lifetime, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution and the costs of making and executing the same, if the defendant hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods and chattels, money, bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money of the said defendant, the said several sums of —— and ——, and the costs of this execution, and of the levying the same.*

Given under the seal of the court, this —— day of ——, 18—.

By the court.

——, Clerk of the said court.

To ——, high bailiff of the said court, and the other bailiffs thereof.

	£	s.	d.
Sums above mentioned...			
Execution			

Notice.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant (*n*).

Chapter III.

Proceedings in Replevin.

In what cases.] All actions of replevin in cases of distress for rent, or damage feasant, which shall be brought in the county court, shall be brought, without writ, in a court under this act (*o*).

Plaint.] In every such action of replevin, the plaint shall be entered in the court holden under this act, for the district wherein the distress was taken (*p*). The rule 24, is to the same effect, namely, that "where any cattle, goods or chattels, taken as a distress for rent in arrear or damage feasant, shall have been replevied by the sheriff, the party at whose instance such replevin shall have been made, shall enter his plaint in the court held under the authority of this Act, for the district within which such distress may have been made."

And on entering the plaint in replevin, the plaintiff must specify and describe, in a statement of particulars, the cattle, or the several goods and chattels, taken under the distress, and of the taking of which he complains (*q*).

The following may be the

Particulars of the Cattle or Goods Distrained.

In the county court of ——, *at* ——.

The —— *day of* ——, 184—.

The following are the particulars of the [*cattle, goods, and chattels*] *of A. B., taken under a distress for* [*rent* or *damage feasant*] *by C. D., at* ——, *in the county of* ——, *and within the district of this court, on* ——, *and with respect to which I now enter my plaint in the said court* (*r*).

[Here enumerate the cattle, goods, &c. distrained; and let the particulars be signed by plaintiff].

(*n*) This form is not in the schedule to the rules.

(*o*) Stat. s. 119.

(*p*) Id. s. 120.

(*q*) Rule 25.

(*r*) This form is not in the schedule to the rules.

Removal.] In case either party to any such action of replevin, shall declare to the court in which such action shall be brought —that the title to any corporeal or incorporeal hereditaments, or to any toll, market, fair or franchise is in question,—*or* that the rent or damage in respect of which the distress shall have been taken, is more than the sum of twenty pounds,—*and* shall have become bound, with two sufficient sureties to be approved of by the clerk of the court, in such sums as to the judge shall seem reasonable, (regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage,) to prosecute the suit with effect and without delay, *and* to prove before the court by which such suit shall be tried, that such title as is aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds;—then, and not otherwise, the action may be removed before any court competent to try the same, in such manner as hath been accustomed (*s*).

The following may be the form of the

Bond on removing Plaint in Replevin.

Know all men by these presents, that we, C. D. of ——, maltster, E. F. of ——, butcher, and G. H. of ——, carpenter, are jointly and severally held and firmly bound to A. B. in the sum of —— pounds of lawful money of Great Britain, to be paid to the said A. B., his certain attorney, executors or administrators; for which payment well and truly to be made, we bind ourselves and each and every of us, our and each and every of our heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated this —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, and in the year of our Lord 184—.

Whereas a certain action of replevin was on —— commenced in the county court of ——, at ——, wherein A. B. was plaintiff and C. D. the defendant. And whereas the said [*C. D.*] *hath declared to the said court that* [*the title to certain corporeal property is in question in the said suit,*—or *that the rent* or *damage in respect of which the distress in this behalf was taken, amounts to more than twenty pounds*]: *Now the condition of this obligation is such, that if the above-bounden C. D. shall prosecute the said suit with effect and without delay in the court of ——, into which it is now about to be removed, and shall prove before the said last mentioned court* [*that such title as is aforesaid is in dispute between the said parties,* or *that there was ground for believing that the said rent* or *damage was of greater*

(*s*) Stat. s. 121.

amount than twenty pounds], *then this present obligation shall be void, otherwise to remain in full force and virtue* (*t*).

Signed, sealed and delivered in the presence of ——. *C. D.* [L.S.] *E. F.* [L.S.] *G. H.* [L.S.]

A question will arise upon this 121st section as to the nature of the writ by which the proceedings are to be removed into the court above. The manner which "hath been accustomed," is, by writ of *recordari facias loquelam*. But that writ was only applicable to a court not of record, such as the ancient county court. These courts, on the contrary, are courts of record; and to remove proceedings from an inferior court of record, before judgment, the proper writ is the writ of *certiorari*; the *recordari facias loquelam* is wholly inapplicable. As to the proceedings in the superior court after the removal, see 2 *Arch. Pr.* p. 243, &c.

Trial, &c.] All actions of replevin in cases of distress for arrear of rent or damage feasant, [not removed,] shall be tried in a summary way, as other actions in the courts held under the authority of this Act; and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms in the schedule to the rules, or to the like effect (*v*).

The following are the forms in the schedules, of the

Judgment for Plaintiff.

No. —. *In the county court of* —— *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon hearing this cause at a court holden at ——, *on the* —— *day of* ——, *it is adjudged, that the said plaintiff do recover against the said defendant, the sum of £* ——, *for his debt* [or *damages by him sustained*], *together with the costs of suit, amounting to the sum of £* ——. *And it is ordered that the said defendant do pay the same to the clerk of the court at his office in* ——, *on or before the* —— *day of* ——.

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.
—— *Clerk.*

Attendance at the office, from 10 *till* 4 *o'clock.*

(*t*) This form is not in the schedule to the rules. (*v*) Rule 26.

Judgment for Defendant.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon hearing this action of replevin at a court holden at ——, *on the* —— *day of* ——, *it is adjudged that the said plaintiff do return to the said defendant the cattle* [or *the goods,* or *chattels,* as the case may be, stating the particulars thereof] —— *forthwith* [or as the case may be]; *and that the said defendant do recover against the said plaintiff the costs of suit, amounting to the sum of £* ——; *and it is further ordered, that the said defendant do pay the same to the clerk of the court, at his office at* ——, *on or before the* —— *day of* ——.

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.
—— *Clerk.*

Office hours, from 10 *till* 4.

Chapter IV.

Proceedings to recover Possession of Small Tenements.

In what cases.] In all cases where "the term and interest of the tenant of any house, land, or other corporeal hereditament,—where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of fifty pounds by the year, and upon which no fine shall have been paid,—shall have ended,—or shall have been duly determined by a legal notice to quit,—and such tenant, or (if such tenant do not actually occupy the premises, or occupy only a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively":—the landlord may enter a plaint in the New County Court, and proceed for the recovery of the possession, in the manner herein directed (*a*).

(*a*) Stat. s. 122.

Plaint and summons.] In the cases above mentioned, "it shall be lawful for the landlord or his agent to enter a plaint in the county court to be holden under this Act; and thereupon a summons shall issue to the person so neglecting or refusing" (*b*).

The following is the form of the

Summons to a Tenant holding over.

No. —. *In the county court of* ——, *at* ——.
(Seal.)

A. B., plaintiff,
against
C. D., defendant.

You are hereby summoned to appear at a county court to be holden at ——, *on the* —— *day of* ——, *at the hour of* —— *in the forenoon, to answer to the above-named plaintiff, wherefore you neglect or refuse to quit and deliver up to him possession of a certain* [*messuage with appurtenances,* or *part of a house, &c.,* as the case may be] *situate at* ——. *And take notice, if you do not appear at the said court, and show cause why you do not quit and deliver up possession as aforesaid, you may, by order of the court, be turned out of the possession held by you.*

Given under the seal of the court, this —— *day of* ——, 18—.

—— *Clerk of the court.*

To ——, *the above-named defendant.*

Such summons may be served,—either personally,—or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid;—or, if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person or persons respectively (*c*).

As a person may occupy premises and not reside in them,—if the tenant or occupier reside in a different district from that in which the premises are situate, it should seem from the above section of the statute that the plaint in such a case should be entered in the court of the district in which the occupier resides, unless the judge of the court, within the district of which the premises are situate, shall, for sufficient

(*b*) Stat. s. 122. (*c*) Id. s. 123.

reason, give leave to enter the plaint in that court (*e*). And yet it appears an anomaly, that an action for the recovery of land, should be brought in a district in which the land is not; and I understand that it is the opinion of many of the judges of these local courts, that the action should be brought in the court of the district within which the house or land is situate, particularly as the statute directs that in certain cases the summons shall be served by posting it upon some part of the premises to be recovered. But that is only in case the place of abode of the party holding over is not known, or admission to it cannot be obtained. Where that is known, and admission to it can be obtained, the service, if not personal, must be at the place of *abode* of the person neglecting or refusing to give up possession. And applying to this the 60th section, which regulates out of what court the summons generally should issue, it would appear that in strictness the law is as I have first above mentioned. The part of the 122nd section, which most favours the idea that the action should be brought where the land lies, is that part which directs that the warrant of possession shall be directed to a bailiff of *the* court, and he alone and his assistants are justified in acting under it. Perhaps the best way, until there shall be some decision upon the subject, will be, that in all cases where the party occupying does not reside within the district in which the land is situate, the leave of the judge of the latter district should be obtained, that the summons may issue out of his court; and the summons may then be served in the other district by a bailiff of that district, under the 61st section of the Act.

Proceedings thereon, hearing, &c.] "If the tenant or occupier shall not appear at the time and place appointed [by the summons], and show cause to the contrary,—and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent,—it shall be lawful for the landlord or agent to give to the court proof of the holding, and of the end or other determination of the tenancy, with the time and manner thereof, and (where the title of the landlord has accrued since the letting of the premises) the right by which he claims the possession (*f*).

Evidence.] It must be premised, as a general principle, that a tenant cannot dispute his landlord's title (*g*), whether he hold by deed (*h*) or not; nor can any person holding under

(*e*) See Stat. s. 60, *ante*, p. 4.
(*f*) Stat. s. 122.
(*g*) *Fleming* v. *Gooding*, 10 Bing. 549. *Parry* v. *House*, Holt. 489. *Wood* v. *Day*, 7 Taunt. 646.
(*h*) *Taylor* v. *Needham*, 2 Taunt. 278.

him (*i*). Even where a party, under a fraudulent pretence, borrowed the keys of a house from J. S., and then retained the possession, it was holden that he could not dispute the title of J. S. in an ejectment brought against him by the latter (*k*).

And therefore, if the action be brought by the landlord who actually let the premises, against the tenant to whom he let them, or any person claiming under him, all he has to do is to prove the letting, and the determination of the tenancy, by notice to quit or otherwise, before the date of the summons. There is no necessity for his going into evidence of his title, for that is admitted, and cannot be denied. The tenant, however, may show that the title of his landlord, although undisputed and indisputable at the time of the letting, was at an end at the time of the date of the summons. He may show that his landlord, pending the term, sold his interest (*l*), or mortgaged the premises (*m*), or that his title has expired (*n*); or that the agreement under which the landlord held, was put an end to (*o*); or that he has become bankrupt (*p*); or that he was but second mortgagee, and that the first mortgagee has claimed the rent, and compelled the defendant to pay it to him (*q*).

Where the action is brought, not by the original landlord, but by a person claiming under him, or by his assignee or person to whom he may have conveyed his interest, or by his devisee or heir at law, the plaintiff must prove the letting by the original landlord, and the determination of the tenancy above-mentioned; and he must also prove his own derivative title from the landlord. In this case, as well as where the action is at the suit of the original landlord, the tenant cannot dispute the title of the landlord (*r*). After the death of the landlord, however, the tenant may show that he was only tenant for life (*s*); or that the title is at an end, as above-mentioned. The tenant also can impeach the plaintiff's derivative title (*t*), unless he have paid rent to him. A mere acknowledgment of the plaintiff's title will not prevent him from disputing it, if it appear that such acknowledgment was obtained by misrepre-

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(*i*) *Doe* v. *Mills*, 2 Ad. & El. 17. *Doe* v. *Fuller*, 1 Tyr. & Gr. 17. *Doe* v. *Austin*, 2 Moore & S. 107. *Doe* v. *Burton*, 9 Car. & P. 254.

(*k*) *Doe* v. *Baytup*, 3 Ad. & El. 188.

(*l*) *Doe* v. *Watson*, 2 Stark. 230.

(*m*) *Doe* v. *Edwards*, 6 Car. & P. 208.

(*n*) *Neave* v. *Moss*, 1 Bing. 360. *England* v. *Slade*, 4 T. R. 682. *Doe* v. *Ramsbottom*, 3 M. & S. 516. *Farmer* v. *Duplock*, 2 Bing. 10.

(*o*) *Brook* v. *Biggs*, 2 Bing. N. C. 572.

(*p*) *Doe* v. *Brown et al.*, 7 Ad. & El. 447.

(*q*) *Doe* v. *Barton et al.*, 9 Law J. 57, qb.

(*r*) *Rennie* v. *Robinson*, 1 Bing. 147. *Doe* v. *Abrahams*, 1 Stark. 305.

(*s*) *Doe* v. *Seaton*, 2 Cr. M. & R. 728.

(*t*) See *Phillips* v. *Pearce*, 5 B. C. 433.

sentation, or arose from a misapprehension of the title set up (*u*). Even an attornment, although an admission of a tenancy, and good *primâ facie* evidence against the tenant (*v*), does not prevent him from disputing the title of the person to whom he has attorned; for he may by mistake have attorned to one who has no title (*w*).

Or, admitting the plaintiff's title, the tenant may prove that the tenancy has not been determined: that the action was commenced before the expiration of the tenancy; that the year of the tenancy, in the case of a notice to quit, has not expired; that the day on which the notice required him to quit, was not the day on which the year of the tenancy expired; that the notice to quit was not served in time; or that such notice was subsequently waived by the plaintiff.

As to the derivative title, it must in strictness be proved with as much strictness, as to its being legal evidence, as if it was given in an action of ejectment; there is nothing in the present statute which dispenses with such strictness.

When the tenant does not appear, proof must be given of the service of the summons, and that the tenant or occupier still neglects or refuses to deliver up the premises.

Judgment and Warrant.] Upon proof as above-mentioned, it shall be lawful for the judge to issue a warrant under the seal of the court to any bailiff of the court, requiring and authorizing him,—within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant,—to give possession of the premises to such landlord or agent (*x*). The following is the form of the

Judgment.

No. —. *In the county court of —— at ——.*
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Upon the hearing of this cause at a court holden at ——, on the —— day of ——, it is adjudged, that the said plaintiff do recover against the said defendant, possession of a certain house [or *land* or *part of a certain house*] *at ——, together with the costs of suit, amounting to the sum of £——, and it is ordered, that the said defendant do forthwith quit and deliver up possession*

(*u*) *Gregory* v. *Doidge*, 3 Bing. 474.

(*v*) *Gravenor* v. *Woodhouse et al.*, 1 Bing. 38. 2 Id. 71.

(*w*) *Cornish et al.* v. *Searell*, 8 B. & C. 471.

(*x*) Stat. s. 122.

of the said house [or *&c.*] *to the said plaintiff; and that a warrant do forthwith issue, to enforce this adjudication, and to require and authorize the bailiff of the said court to give possession of the said house* [or *&c.*] *to the said plaintiff, within* —— *days from the date of such warrant; and it is further ordered, that the said defendant do pay the said sum of £*——, *for the said plaintiff's costs, to the clerk of this court, at his office in* ——, *on or before the* —— *day of* ——.

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.

—— *Clerk.*

Office hours, from 10 *till* 4.

Warrant to deliver Possession.

No. —. *In the county court of* —— *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas at a county court duly holden at ——, *within the jurisdiction of the said court, on the* —— *day of* ——, *before* ——, *the judge of the said court, it was adjudged that the said plaintiff should recover against the said defendant possession of a certain house* [or *land*, or *part of a certain house*, as in the judgment,] *at* ——, *together with the costs of suit, amounting to the sum of* ——; *and it was then ordered that the defendant should forthwith quit and deliver up possession of the said house* [&c.] *to the said plaintiff; and that a warrant should forthwith issue, to enforce that adjudication, and to require and authorize the bailiff of the said court to give possession of the said house* [&c.] *to the said plaintiff within* —— *days from the date of the said warrant; and it was then further ordered that the defendant should pay the sum of* —— *for the said plaintiff's costs, to the clerk of the said court, at his office in* ——, *on or before the* —— *day of* ——;* *And whereas the said defendant hath not quitted or delivered up possession of the said house,* [&c.] *to the said plaintiff; These are, therefore, to require and authorize you to give possession of the said house* [&c.] *to the said plaintiff, within* —— *days from the day of the date of this warrant.*

Given under the seal of the court, this —— *day of* ——, 18—.

—— *Clerk of the court.*

To ——, *bailiff of the said court* (*y*).

(*y*) This and the next form are not in the schedule to the rules.

This shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession of them to the plaintiff (*z*). But an entry under such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon (*a*). The warrant may be executed in the same manner that a sheriff executes a writ of possession, namely, by entering upon the premises, putting all the occupants and their goods out, and giving the possession to the plaintiff or to some person attending on his behalf.

Warrant of Execution for Costs.

Same as the last form to the asterisk *; and then thus] : *And whereas the said sum of ——, for the said plaintiff's costs, has not been paid, pursuant to the said judgment and order: These are therefore to require and order you forthwith to make and levy, by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of ——, and also the costs of this execution; and also to seize or take any money or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.*

Given under the seal of the court, this —— day of ——, 18—.

By the court.

—— Clerk of the court.

To ——, high bailiff of the said court, and the other bailiffs thereof.

	£	s.	d.
Costs			
Execution....			

Notice.

The goods and chattels are not to be sold until after the end

(*z*) Stat. s. 122. (*a*) Id.

of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

I have made this a separate warrant from that for delivering possession, for several reasons: the judgment seems to require it; the judgment may require the delivery of possession to be at one time, the payment of the costs at another; and the warrant for delivery of possession must seemingly be directed to the bailiff who is to execute it, but the warrant of execution for costs must be directed to the high bailiff (*l*).

Indemnity to Judge, officers, &c.] It shall not be lawful to bring any action or prosecution against any judge, or against the clerk of the court by whom such warrant as aforesaid [that is, the warrant to deliver possession] shall have been issued, or against any bailiff or other person by whom such warrant may be executed, or summons affixed (*m*), for issuing such warrant or executing the same respectively, or affixing such summons,—by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises (*n*).

Liability of Plaintiff.] In every case, in which the person by whom any such warrant shall be sued out of the county court, had not, at the time of suing out the same, lawful right to the possession of the premises,—the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant (*o*).

And nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the county court, from any action which may be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, where such person had not, at the time of suing out the warrant, lawful right to the possession of the said premises (*p*).

But where the landlord, at the time of applying for such warrant, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid,—neither the landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser, by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the

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(*l*) See Stat. s. 94, *ante*, p. 87.
(*m*) See *ante*, p. 126.
(*n*) Stat. s. 124.
(*o*) Stat. s. 126.
(*p*) Id. s. 122.

party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit: Provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed by the jury at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the judge before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed (*q*).

Warrant, in what cases stayed.] After enacting that the party suing out such warrant shall be liable to an action of trespass, if he have not a lawful right to the possession of the premises, as above mentioned,—the statute enacts that in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sum as to the judge shall seem reasonable (regard being had to the value of the premises, and to the probable cost of such action,) to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein,—execution upon the warrant shall be stayed, until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass, a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant (*r*).

And the bond in such case, shall be made to the other party to the action, at the costs of such other party, and shall be approved of by the judge, and attested under the seal of the court; and if it become forfeited, or if in such action of trespass the judge shall not certify upon the record in court that the condition of the bond hath been fulfilled,—the party to whom the bond shall have been so made, may bring an action of debt, and recover thereon: Provided that the court in which such last mentioned action shall be brought, may, by rule of court, give such relief to the parties liable on such bond, as may be agreeable to justice and reason; and such rule shall have the effect of a defeazance to such bond (*s*).

The following may be the form of the

Bond, on staying the Execution of a Warrant of Possession.

Know all men by these presents, that we, C. D., of ——, maltster; E. F., of ——, butcher; and G. H., of ——, car-

(*q*) Stat. s. 125. (*r*) Id. s. 126. (*s*) Id. s. 127.

penter, are jointly and severally held and firmly bound to A. B. in the sum of —— pounds of lawful money of Great Britain, to be paid to the said A. B., his certain attorney, executors, or administrators; for which payment well and truly to be made, we bind ourselves, and each and every of us, our and each and every of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this —— day of ——, in the —— year of the reign of her Majesty Queen Victoria, and in the year of our Lord 184—.

Whereas, at a county court duly holden at ——, within the jurisdiction of the said court, on ——, before S. W., the judge of the said court, it was adjudged that the said plaintiff should recover, against the said defendant, possession of a certain house [&c., as in the judgment] *at ——, together with the costs of suit, amounting to the sum of ——; and it was then ordered that the defendant should forthwith quit and deliver up possession of the said house* [&c.] *to the said plaintiff, and that a warrant should forthwith issue, to enforce that adjudication, and to require and authorize the bailiff of the said court to give possession of the said house* [&c.] *to the said plaintiff within —— days from the date of the said warrant: And whereas the said warrant hath issued from the said court, but the same hath not as yet been executed: And whereas the said judge of the said court, upon application to him by the said C. D. in this behalf, hath ordered execution upon the said warrant to be stayed, until judgment shall be given in an action of trespass to be brought by the said C. D. against the said A. B., the person by whom such warrant was sued out, upon the said C. D. becoming bound, with the said E. F. and G. H., two sufficient sureties, in the sum of ——, to sue the said A. B., by whom such warrant was sued out, with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein:—Now the condition of this obligation is such, that if the said C. D. shall sue the said A. B. in such action of trespass in the court of* [*Queen's Bench, at Westminster*], *with effect and without delay, and shall pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant in such action, or in case the said C. D., the plaintiff in such action, shall discontinue or not prosecute his said action, or shall become nonsuit therein, then this present obligation to be void, otherwise to remain in full force and virtue* (*t*).

Signed, sealed, and delivered, in the presence of ——.

C. D. (L. S.)
E. F. (L. S.)
G. H. (L. S.)

(*t*) This form is not in the schedule to the rules.

CONCLUSION.

Proceedings for Penalties under this Statute.

Summons and Conviction.] In all cases in which by this Act any penalty or forfeiture is made recoverable before a justice of the peace, it shall be lawful for such justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons, without information in writing, shall be as valid and effectual to all intents and purposes, as if an information in writing had been exhibited (*t*).

And in all cases where any conviction shall be had for any offence committed against this Act the form of conviction may be in the words or to the effect following: (that is to say,)

"*Be it remembered, that on this —— day of ——, in the year of our Lord* —— A. B. *is convicted before* —— *of Her Majesty's justices of the peace for the* —— [or *before a judge appointed under an Act passed in the tenth year of the reign of Her Majesty Queen Victoria, intituled "an Act for the more easy recovery of Small Debts and Demands in England,"*] *of having* [state the offence]; *and I* [or *we*] *the said* ——, *do adjudge the said* —— *to forfeit and pay for the same the sum of* ——, *or to be committed to* —— *for the space of* ——. *Given under my hand and seal the day and year aforesaid* (*u*)."

Distress thereon.] All penalties, fines, and forfeitures by this Act inflicted or authorized to be imposed (the manner of recovering and applying whereof is not hereby otherwise particularly directed) shall, upon proof before any justice of the peace, having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed, either by the confession of the party offending or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice; and the overplus (if any), after such penalties, fines, and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels (*v*).

(*t*) Stat. s. 134. (*u*) Id. s. 135. (*v*) Id. s. 130.

And if any such penalties, fines, and forfeitures respectively shall not be paid forthwith upon conviction, it shall be lawful for such justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security such justice shall be empowered to take by way of recognizance or otherwise as to him shall seem fit (*w*).

Also where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case (*x*).

Commitment.] If upon return of such warrant it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of such justice, either by confession of the offender or otherwise, that he hath not within the jurisdiction of such justice sufficient goods and chattels whereupon to levy all such penalties, forfeitures, costs, and charges, such justice may, at his discretion, without issuing any warrant of distress, commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied (*y*).

(*w*) Stat. s. 131. (*x*) Id. s. 137. (*y*) Id. s. 132.

APPENDIX.

APPENDIX.

1. *Contents of the Statute.*
2. *The Statute.*
3. *Contents of the Rules of Court.*
4. *The Rules of Court.*
5. *The Districts.*

CONTENTS

OF THE

STATUTE.

SECT.

1. Preamble. Her Majesty may order this Act to be put in execution, except in London, p. 145.
2. Counties to be divided into districts, p. 146.
3. Courts under this Act to have the same jurisdiction as to debts and demands as county court, as altered by this Act, p. 147.
4. Jurisdiction of county court in other matters, preserved, p. 147.
5. Courts in schedules A. and B. may be ordered to be holden as county courts, and districts assigned to them, p. 147.
6. When a court is established under this Act, stat. 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 117, and all other Acts affecting their jurisdiction, repealed, p. 147.
7. Previous proceedings under those Acts, valid, p. 148.
8. Orders in Council for the purposes of this Act, to be published in the Gazette, p. 148.
9. Appointment and qualification of judges. Proviso as to attornies acting as judges under Acts in schedules A. and B., p. 148.
10. Judges now acting in the courts of Bath, Bristol, Liverpool and Manchester, to be appointed to the courts under this Act for those places, p. 149.

SECT.
11. Stewards of the Manors of Sheffield and Ecclesall, to be the first judges for those districts, p. 149.
12. The present county clerk of Middlesex to be judge of such of the Middlesex districts as he may select. Present registrar to be first clerk, p. 150.
13. Certain Lords of Manors to have the appointment of officers of courts in schedule C., p. 151.
14. Lords of Manors, &c. may surrender their courts, p. 151.
15. Judges of courts in schedules A. and B., not subject to stat. 5 & 6 Vict. c. 122; p. 152.
16. Judges, how appointed on a vacancy, p. 152.
17. Judges not to practise as barristers in their districts, p. 152.
18. Judges removeable for inability or misbehaviour, p. 152.
19. Districts may be changed, p. 152.
20. Judge's deputy, in what cases and by whom appointed, p. 153.
21. Judges may act as justices of the peace, without qualification by estate, p. 153.
22. Judges to perform certain duties relating to matters depending in the court of chancery, p. 153.
23. Treasurers of the court by whom appointed, p. 154.
24. Clerks of the court to be appointed by the judges, p. 154.
25. In populous districts two clerks may be appointed jointly, p. 154.
26. In case of illness, &c. of clerk, a deputy may be appointed, p. 155.
27. Duties of clerks, p. 155.
28. Offices of clerks, treasurer and high bailiff, not to be conjoined, p. 155.
29. Officers not to act as attornies in these courts, p. 156.
30. Penalty for breach of the last two enactments, p. 156.
31. Appointment of high bailiffs, &c., p. 156.
32. Provision for the high bailiffs of Westminster and Southwark, p. 156.
33. Duties of high bailiffs and bailiffs, p. 157.
34. Provision as to the high bailiffs of the court in schedules A. and B., p. 157.
35. Provision as to the officers of the two courts of Bristol, p. 158.
36. Treasurers, clerks and high bailiffs to give security, p. 158.
37. Fees to be according to schedule D., and tables of fees to be set up. Appropriation of surplus fees, p. 159.
38. Compensation for persons whose rights or emoluments will be diminished, p. 160.
39. Judges and officers may be paid by salaries. No compensation as to court abolished, p. 161.
40. Salaries not to exceed a certain amount, p. 161.
41. Fees and fines to be accounted for to treasurer, p. 162.
42. Clerk's accounts to be audited by treasurer, p. 162.

SECT.
43. Treasurer's accounts to be audited by Audit Board, p. 162.
44. Balances, how applied, p. 163.
45. Accounts of treasurers to be audited under stat. 25 Geo. 3, c. 52; p. 163.
46. Clerk to send to Audit Board accounts of sums paid to treasurer, p. 163.
47. Accounts when audited to be sent to the Treasury, p. 163.
48. Treasurer to provide court houses, &c., p 164.
49. What prisons to be used, p. 164.
50. Power of purchasing land, p. 164.
51. Treasurer empowered to borrow money, for the purposes of this Act, p, 165.
52. General fund, for what purposes, and how raised, p. 165.
53. Property in courts in schedules A. and B. to vest in treasurer, p. 166.
54. Provision for outstanding liabilities, p. 167.
55. Clerks to have the charge of court houses, &c., and to appoint servants, &c., p. 167.
56. Courts when and where to be holden, and notice thereof to be given, p. 168.
57. All summons and process to be under seal, p. 168.
58. Jurisdiction of the courts, p. 168.
59. Suits to be by plaint, p. 169.
60. In what district summons may issue, p. 169.
61. Summons or process, how served out of the district of the court, p. 169.
62. Proof of service of process, p. 169.
63. Demands not to be split, p. 170.
64. Minors may sue for wages, p. 170.
65. Suits in cases of partnership, intestacy, or legacy, p. 170.
66. Executors and administrators may sue or be sued, p. 170.
67. No privilege allowed, p. 170.
68. One of several, jointly liable, may be sued, p. 171.
69. Judge to determine all questions, unless a jury be summoned, p. 171.
70. Actions under 5*l.* may be tried by jury, if required, p. 171.
71. Party requiring jury, to make deposit, p. 171.
72. Who shall be jurors, p. 172.
73. Five jurors only to be sworn, and verdict to be unanimous, p. 172.
74. Proceedings at the hearing, p. 172.
75. No evidence of cause of action not in the summons, p. 173.
76. Special defences to be notified to clerk, and by him to the plaintiff, p. 173.
77. Suits may be referred to arbitration, p. 173.
78. Rules and forms of proceedings to be framed, p. 173.
79. Proceedings if plaintiff do not appear, p. 174.
80. Proceedings if defendant do not appear, p. 174.
81. The judge may grant time, p. 175.

of the said house [or *&c.*] *to the said plaintiff; and that a warrant do forthwith issue, to enforce this adjudication, and to require and authorize the bailiff of the said court to give possession of the said house* [or *&c.*] *to the said plaintiff, within* —— *days from the date of such warrant; and it is further ordered, that the said defendant do pay the said sum of £*——, *for the said plaintiff's costs, to the clerk of this court, at his office in* ——, *on or before the* —— *day of* ——.

Given under the seal of the court, this —— *day of* ——, 18—.

By the court.

—— *Clerk.*

Office hours, from 10 *till* 4.

Warrant to deliver Possession.

No. —. *In the county court of* —— *at* ——.
(Seal.)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas at a county court duly holden at ——, *within the jurisdiction of the said court, on the* —— *day of* ——, *before* ——, *the judge of the said court, it was adjudged that the said plaintiff should recover against the said defendant possession of a certain house* [or *land*, or *part of a certain house*, as in the judgment,] *at* ——, *together with the costs of suit, amounting to the sum of* ——; *and it was then ordered that the defendant should forthwith quit and deliver up possession of the said house* [&c.] *to the said plaintiff; and that a warrant should forthwith issue, to enforce that adjudication, and to require and authorize the bailiff of the said court to give possession of the said house* [&c.] *to the said plaintiff within* —— *days from the date of the said warrant; and it was then further ordered that the defendant should pay the sum of* —— *for the said plaintiff's costs, to the clerk of the said court, at his office in* ——, *on or before the* —— *day of* ——;* *And whereas the said defendant hath not quitted or delivered up possession of the said house,* [&c.] *to the said plaintiff; These are, therefore, to require and authorize you to give possession of the said house* [&c.] *to the said plaintiff, within* —— *days from the day of the date of this warrant.*

Given under the seal of the court, this —— *day of* ——, 18—.

—— *Clerk of the court.*

To ——, *bailiff of the said court* (*y*).

(*y*) This and the next form are not in the schedule to the rules.

This shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession of them to the plaintiff (*z*). But an entry under such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon (*a*). The warrant may be executed in the same manner that a sheriff executes a writ of possession, namely, by entering upon the premises, putting all the occupants and their goods out, and giving the possession to the plaintiff or to some person attending on his behalf.

Warrant of Execution for Costs.

Same as the last form to the asterisk *; and then thus] : *And whereas the said sum of ——, for the said plaintiff's costs, has not been paid, pursuant to the said judgment and order: These are therefore to require and order you forthwith to make and levy, by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of ——, and also the costs of this execution; and also to seize or take any money or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.*

Given under the seal of the court, this —— day of ——, 18—.

By the court.

—— Clerk of the court.

To ——, high bailiff of the said court, and the other bailiffs thereof.

	£	s.	d.
Costs			
Execution....			

Notice.

The goods and chattels are not to be sold until after the end

(*z*) Stat. s. 122. (*a*) Id.

AN ACT

FOR THE MORE EASY RECOVERY OF SMALL DEBTS AND DEMANDS IN ENGLAND.

[28TH AUGUST, 1846.]

WHEREAS sundry Acts of Parliament have been passed from time to time for the more easy and speedy recovery of small debts within certain towns, parishes and places in *England:* And whereas by an Act passed in the eighth year of the reign of her majesty, intituled *An Act to amend the laws of Insolvency, Bankruptcy, and Execution,* arrest upon final process in actions of debt not exceeding twenty pounds was abolished, except as to certain cases of fraud and other misconduct of the debtors therein mentioned: And whereas by an Act passed in the ninth year of the reign of her said majesty, intituled, *An Act for the better securing the Payment of Small Debts,* further remedies were given to judgment creditors, in respect of debts not exceeding twenty pounds, for the discovery of the property of debtors, and punishment of frauds committed by them: And whereas by the last-mentioned Act her majesty is enabled, with the advice of her privy council, to extend the jurisdiction of certain courts of requests and other courts for the recovery of small debts to all debts and demands, and all damages arising out of any express or implied agreement, not exceeding twenty pounds, and also to enlarge and in certain cases to contract the district of such courts, and make certain other alterations in the practice of such courts in manner in the now-reciting Act mentioned; and it is expedient that the provisions of such Acts should be amended, and that one rule and manner of proceeding for the recovery of small debts and demands should prevail throughout *England*: And whereas the county court is a court of ancient jurisdiction having cognizance of all pleas

7 & 8 Vict. c. 96.

8 & 9 Vict. c. 127.

of personal actions to any amount by virtue of a writ of justicies issued in that behalf: And whereas the proceedings in the county court are dilatory and expensive, and it is expedient to alter and regulate the manner of proceeding in the said courts for the recovery of small debts and demands, and that the courts established under the recited Acts of parliament, or such of them as ought to be continued, should be holden after the passing of this Act as branches of the county court under the provisions of this Act, and that power should be given to her majesty to effect these changes at such times and in such manner as may be deemed expedient by her majesty, with the advice of her privy council: Be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for her majesty, with the advice of her privy council, from time to time to order that this Act shall be put in force in such county or counties as to her majesty, with the advice aforesaid, from time to time shall seem fit; and this Act shall extend to those counties concerning which any such order shall have been made, and not otherwise or elsewhere: Provided always, that no court shall be established under this Act in the city of *London*.

Her majesty may order this Act to be put in execution.

Counties to be divided into districts.

II. And be it enacted, That it shall be lawful for her majesty, with the advice aforesaid, to divide the whole or part of any such county, (including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained, or thereunto adjoining,) into districts,—and to order that the county court shall be holden for the recovery of debts and demands under this Act in each of such districts,—and from time to time to alter such districts, as to her majesty, with the advice aforesaid, shall seem fit,—and to order from time to time that the number of districts in and for which the court shall be holden shall be increased until the whole of such county shall be within the provisions of this Act,—and, with the advice aforesaid, to alter the place of holding any such court, or to order that the holding of any such court be discontinued, or to consolidate any two or more of such districts,—and from time to time, with the advice aforesaid, to declare by what name, and in what towns and places, the county court shall be holden in each district; and if it shall appear to her majesty that any part of any county, liberty, city, borough, or district may conveniently be declared within the jurisdiction of the county court of an adjoining county, it shall be lawful for her majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the county court holden for the purposes

of this Act for such adjoining county in and for such district as her majesty shall order, in like manner as if it were part of such adjoining county.

III. And be it enacted, That every court to be holden under this Act shall have all the jurisdiction and powers of the county court for the recovery of debts and demands, as altered by this Act, throughout the whole district for which it is holden, and there shall be a judge for each district to be created under this Act, and the county court may be holden simultaneously in all or any of such districts; and every court holden under this Act shall be a court of record.

Courts held under this Act to have the same jurisdiction as county courts, and to be courts of record.

IV. And be it enacted, That for all purposes, except those which shall be within the jurisdiction of the courts holden under this Act, the county court shall be holden as if this Act had not been passed; and all proceedings commenced in the county court of any county, before the time when any court shall be holden under this Act in such county, may be continued, executed, and enforced against all persons liable thereunto, in the same manner as if they had been commenced under the authority of this Act.

Preserving the jurisdiction of county courts.

V. And be it enacted, That it shall be lawful for her majesty, with the advice of her privy council, to order that any court holden for the recovery of small debts or demands within the provisions of any Act cited in either of the schedules annexed to this Act, and marked (A.) and (B.) respectively, shall be holden as a county court; and it shall be lawful for her majesty, with the advice aforesaid, to assign a district to every such court, either greater or less than the district in which the court holden under the provisions of any such Act now has jurisdiction, and to alter the place of holding any such court, or to order that any such court be abolished; and every such court shall continue to be holden under the Act according to which it is now constituted or regulated, until the time mentioned in any such order which shall be made with reference to such court; and from and after the time mentioned in any such order, the Act or Acts under which such court is now constituted, so far as the same relate to the establishment or jurisdiction or practice of a court for the recovery of small debts or demands, shall be repealed, but not so as to revive any Act thereby repealed; and such court so ordered to be holden as a county court, shall henceforth be holden as a county court under this Act, and in all respects as if it had been originally constituted under the provisions of this Act.

Her majesty may order any court under Acts in schedules (A.) and (B.) to be held as a county court, and may assign a district to the same.

VI. And be it enacted, That as soon as a court shall have been established in any district under this Act, and also at

When a court shall

be established under this Act, recited Acts and all other Acts affecting its jurisdiction, repealed.

the time mentioned in any such order which shall have been made as aforesaid for holding any of the courts mentioned in either of the said Schedules as a county court under this Act, the several provisions and enactments of the said Acts of parliament of the eighth and of the ninth year of the reign of her majesty, and of every other Act of parliament heretofore passed (so far as the same respectively relate to or affect the jurisdiction and practice of the court so established or ordered to be holden as a county court,—or give jurisdiction to any court, or to any commissioner of the court of bankruptcy, with respect to judgments or orders obtained in the court so established or ordered to holden as a county court,) shall be repealed.

Proceedings under former Acts to be valid.

VII. Provided always, and be it enacted, That all proceedings in execution of the said Acts or any of them commenced before the passing of this Act, or before the days severally appointed for the alteration of the constitution of the said courts, shall be as valid to all intents and purposes as if this Act had not been passed, or as if the said courts had not been altered, and may be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this Act.

Orders in council to be published in the London Gazette.

VIII. And be it enacted, That any order in council made for the purposes of this Act, shall be published in the *London Gazette*; and notice of the intention of her majesty to take into consideration the propriety of making any such order shall be published in the *London Gazette* one calendar month at least before any such order shall be made.

Appointment and qualification of judges.

IX. And be it enacted, That the lord chancellor shall appoint as many fit persons as are needed, to be judges of the county court under this Act,—each of whom shall be a barrister-at-law who shall be of seven years standing,—or who shall have practised as a barrister and special pleader for at least seven years,—or a barrister or attorney-at-law who, under the provisions of any of the Acts cited in the said schedules (A.) and (B.), or under the provisions of either of the said Acts of the eighth year and of the ninth year of the reign of her majesty, shall have been nominated or appointed to preside in or hold any court constituted or held under any of the Acts cited in either of the said schedules (A.) and (B.), whether by the title of judge or barrister, or county clerk, assessor, or steward, or deputy steward, or by any other title or style whatsoever,—or a person filling the office of judge of the county court, or county clerk, in the same county, at the time of the passing of this Act: Provided always, that every attorney at law who shall be appointed a judge of the county court under this Act, and who shall

Proviso as to attorneys acting as

be the partner of any other attorney at law, shall, within twelve calendar months next after entering on the said office of judge of the county court, dissolve such partnership or vacate the said office of judge, and shall not during his continuance as such judge enter into any new partnership;—and that no attorney at law, who shall be appointed a judge of any county court under this Act, shall be, either by himself or his partner, employed or act as town clerk,—or clerk of the peace of any county, city, or borough,—or as clerk to any bench of justices,—or as clerk or secretary to any board of guardians or governors or directors of the poor,—or of any vestry or local or parochial board of trustees or commissioners,—or of any public company or corporation whatsoever,—or directly or indirectly concerned as attorney or agent for any party in any court regulated by this Act,—or, after the expiration of the said term of twelve calendar months, in any other court of law or equity.

Judges under Acts cited in Schedules (A.) and (B.)

X. And whereas, under the provisions of the several Acts cited in the schedule marked (A.) annexed to this Act, barristers have been appointed and now act as salaried commissioner, or as assessor or assistant to the commissioners appointed to hold the several courts of request constituted or regulated by the said several Acts, in the cities of *Bath* and *Bristol*, and in the boroughs of *Liverpool* and *Manchester:* be it enacted, That when any order shall be made for holding a court under this Act within the said cities and boroughs respectively, districts shall be constituted which shall comprise at least the whole of the said cities and boroughs respectively; and every such barrister, who shall have been on the first day of *June* in this year the salaried commissioner, or assessor or assistant to the commissioners, appointed to hold the said several courts of request, and who shall continue to hold the same office at the time when such order as last aforesaid shall be made respecting their city or borough respectively, shall be entitled to be appointed the first judge under this Act of the court to be holden in and for the said cities and boroughs respectively.

Judges at present acting in the courts of Bath, Bristol, Liverpool, and Manchester, entitled to the first appointment under this Act for those places.

XI. And whereas, an Act was passed in the forty-eighth year of the reign of King *George* the Third, intituled *An Act for regulating the Proceedings in the Courts Baron of the Manors of* Sheffield *and* Ecclesall *in the County of York*, under the provisions of which Act, *John Parker*, Esquire, has been appointed and is steward of the manor of *Sheffield*, and *Daniel Maude*, Esquire, has been appointed and is steward of the manor of *Ecclesall:* be it enacted, That if the said *John Parker* shall continue steward of the manor of *Sheffield* when any order shall be made for holding a court under this Act within the liberty of *Hallamshire*,

Stewards of the manors of Sheffield and Ecclesall appointed under 48 G. 3, c. 103. to be the first judges under this Act for those districts.

a district shall be constituted which shall comprise at least the whole liberty of *Hallamshire*, except the hamlet or bierlow of *Ecclesall*, and if the said *Daniel Maude* shall continue steward of the manor of *Ecclesall* when any order shall be made for holding a court under this Act in the manor of *Ecclesall*, another district shall be constituted under the provisions of this Act, which shall comprise at least the whole hamlet or bierlow of *Ecclesall*; and in such cases respectively the said *John Parker* shall be entitled to be appointed the first judge, under this Act, of the court to be holden in the district comprising the liberty of *Hallamshire*, except the bierlow of *Ecclesall*, and the said *Daniel Maude* shall be entitled to be appointed the first judge, under this Act, of the court to be holden in the district comprising the bierlow of *Ecclesall*, and the districts of the said two courts shall not be reduced within the said limits respectively so long as the said *John Parker* and *Daniel Maude* respectively shall continue judges of the said courts; and the present deputy stewards of the said two courts baron shall be entitled to be appointed the first clerks of the said two courts respectively, or in case of the consolidation of the said two courts, to act jointly as clerks of the consolidated court, under such regulations as to the division of duties and emoluments of the office as shall be made by order of court, with reference to the duties and emoluments of their offices in the said two courts before such consolidation, in case of difference between them; and the said *John Parker* and *Daniel Maude* shall have the same privilege of holding the said courts by deputy, which they now have of holding the said courts baron by deputy, provided only that the appointment of every such deputy shall be subject to the approval of one of her majesty's principal secretaries of state; and the said *John Parker* and *Daniel Maude* shall hold the said courts in all other respects according to the provisions of this Act.

The present county clerk of Middlesex, appointed under 23 G. 2, c. 33, to be the first judge under this Act, and may continue to appoint a deputy, subject to approval of secretary of state.

XII. And whereas the county court of *Middlesex* is regulated under the provisions of an Act passed in the twenty-third year of the reign of King *George* the Second, intituled *An Act for preventing Delays and Expences in the Proceedings in the County Court of* Middlesex, *and for the more easy and speedy Recovery of Small Debts in the said County Court*, under which the county clerk is empowered to appoint a deputy to act for him in his said office of county clerk: And whereas the said county of *Middlesex*, within the jurisdiction of the said court, is so populous, that it will be expedient that several districts should be constituted therein under this Act: be it enacted, That if the present county clerk of *Middlesex* shall continue county clerk of *Middlesex* when any order shall be made for holding a court, under this Act, within the jurisdiction of the said

court, he shall be entitled to be appointed the first judge under this Act of such of the said districts as he shall select, and shall hold the said court in all respects according to the provisions of this Act, except that he shall be removable from the said office of judge only in the same manner as he is now by law removable from the office of county clerk, and that he shall have power to hold the court by his present deputy, and, on vacancy of the office of deputy, to appoint a deputy to hold the said court for him, provided such deputy be a barrister of not less than three years standing, and shall be approved by one of her majesty's principal secretaries of state; and the present registrar of the said county court shall be entitled to be the first clerk of the court holden in the district so selected by the county clerk; and all suits and proceedings commenced in the county court of *Middlesex*, before the division of the said county into districts, shall be continued, and may be executed and enforced, as if they had commenced under this Act before the said county clerk in the district so selected by him.

Present registrar to be the first clerk.

XIII. And be it enacted, That whenever any Order shall be made for holding a court under this Act, within the several towns mentioned in the first column of the schedule marked (C.) annexed to this Act, then, upon the next vacancy which shall happen after the passing of this Act in the several offices mentioned in the second column of the said schedule (C.) in conjunction with such courts, the several lords for the time being of the manors and liberties mentioned in the third column of the said schedule (C.) in conjunction with the said courts, shall be entitled to appoint persons properly qualified according to the provisions of this Act, to fill the said offices respectively, subject nevertheless in each case to the approval of one of her majesty's principal secretaries of state.

Provisions for certain lords of manors having rights of appointment under the Acts hereby repealed.

XIV. And be it enacted, That it shall be lawful for the lord of any hundred, or of any honor, manor, or liberty, having any court in right thereof in which debts or demands may be recovered, to surrender to her majesty the right of holding such court for any such purpose, (with the consent of any steward or other officer, if any, having a freehold office in such court,) or upon the next vacancy in any such freehold office; and from and after such surrender, such court shall be discontinued, and the right of holding such court shall cease, and all proceedings commenced in such court may thereafter be continued, and shall be enforced and executed, as if they had been commenced under the authority of this Act in a county court holden for the district in which the cause of action arose; but no person shall be entitled to claim any compensation under this Act

Lords of manors, &c. may surrender courts, with consent of persons interested.

by reason of any such surrender: Provided always, that the surrender of the right of holding any such court for the recovery of debts and demands, shall not be deemed to infer the surrender or loss of any other franchise incident to the lordship of such hundred, honor, manor, or liberty, and that the court thereof may be holden for all other purposes, if any, incident thereunto, as now by law it may.

Appointments of judges who have previously officiated in any county court, not subject to 5 & 6 Vict. c. 122.

XV. And be it declared and enacted, That the appointment of any person who at the passing of this Act shall by any of the titles herein-before specified preside in or hold any court constituted or held under any of the Acts cited in either of the said schedules (A.) and (B.), to be the judge of any county court, shall not be deemed an appointment to hold a public office or employment within the meaning of an Act passed in the sixth year of the reign of her present majesty, intituled *An Act for the Amendment of the Law of Bankruptcy*, so as to deprive him of any compensation to which he may be entitled under the said Act.

For supplying vacancies among the judges of the county court.

XVI. And be it enacted, That from time to time when any judge appointed under this Act, shall die, resign, or be removed, and the district for which he was appointed shall not be consolidated with any other district, another judge shall be appointed who shall be a barrister-at-law who shall be of seven years standing,—or who shall have practised as a barrister and special pleader for at least seven years,—or who shall have been the county clerk of the same county at the time of the passing of this Act; and every such appointment shall be made by the lord chancellor, or, where the whole of the district is within the duchy of *Lancaster*, by the chancellor of the duchy of *Lancaster*.

Judges not to practise as barristers in their districts, except in certain cases.

XVII. And be it enacted, That no judge appointed under this Act, shall, during his continuance as such judge, practise as a barrister within the district for which his court is holden under this Act,—except those barristers already appointed to preside in or hold the said courts in *Bath*, *Bristol*, *Liverpool*, *Manchester*, *Sheffield*, *Ecclesall*, and *Middlesex*, and now practising in chambers as conveyancing counsel, who may continue such practice.

Judges of the county court removable for inability, &c.

XVIII. And be it enacted, That it shall be lawful for the said lord chancellor, or, where the whole of the district is within the duchy of *Lancaster*, for the chancellor of the said duchy, if he shall think fit, to remove for inability or misbehaviour any such judge already appointed or hereafter to be appointed.

Districts of judges may be changed.

XIX. Provided always, and be it enacted, That it shall be lawful for the lord chancellor or chancellor of the said

duchy, within their several jurisdictions, to remove any judge from any district to which he shall have been appointed, for the purpose of appointing him to any other district in which the salary of such judge shall not be less than in the district from which he shall be so removed.

As to the appointment of a deputy to a judge.

XX. And be it enacted, That in case of illness or unavoidable absence, the cause whereof shall be entered on the minutes of the court, it shall be lawful for the judge appointed to hold any court under this Act, or in case of the inability of the judge to make such appointment, for the lord chancellor, or, where the whole of the district is within the duchy of *Lancaster*, for the chancellor of the duchy, to appoint some other person, who shall be a judge appointed under this Act,—or who shall have practised as a barrister-at-law for at least three years,—or as an attorney of one of her majesty's superior courts of common law for ten years, but not then residing or practising as an attorney in the district for which the court is holden,—to act as the deputy of such judge during such illness or unavoidable absence; and it shall also be lawful for the judge, with the approval of the said lord chancellor, or chancellor of the duchy, to appoint a deputy, who shall be a judge appointed under this Act,—or who shall have practised as a barrister-at-law for at least three years,—to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and privileges, and perform all the duties, of the judge for whom he shall have been so appointed.

Judges may act as justices if in the commission of the peace.

XXI. And be it enacted, That every judge of the county court, whose name shall be inserted by her majesty in any commission of the peace for the county, riding, or division of a county for which he is appointed judge of the county court, may and shall act in the execution of the office of justice of the peace for the said county, riding or division, although he may not have such qualification by estate or interest in lands, tenements, and hereditaments as is required by law in the case of other persons being justices of the peace for a county, provided that he be not disqualified by law to act as a justice of the peace for any other cause or upon any other occasion than in respect of the want of such an estate or interest as aforesaid.

Judges, &c. appointed under this Act authorized to perform certain

XXII. And be it enacted, That the judges and other officers to be appointed under this Act, shall be authorized and required to perform all such duties in or relating to any causes or matters depending in the high court of chancery, or before any judge thereof, or before the lord

duties relating to matters depending in the court of chancery.

chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the lord chancellor shall from time to time by any general order direct; and for this purpose, and subject to the general rules and orders of the said court, shall have and exercise all such authorities as may be duly exercised by the commissioners or other officers of the said court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorized by this Act to be received are directed to be accounted for and applied: Provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

Treasury to appoint treasurers of courts holden under this Act.

XXIII. And be it enacted, That the commissioners of her majesty's treasury of the United Kingdom of *Great Britain* and *Ireland* shall appoint so many persons as they shall think fit to be treasurers of the courts holden under this Act, and may remove any such treasurer, if they shall see occasion so to do, and appoint another person in his room; and every such treasurer shall be paid by salary in such manner and to such amount as the said commissioners from time to time shall order; and the salary of every such treasurer shall be paid out of the consolidated fund of the United Kingdom of *Great Britain* and *Ireland*: Provided always, that the person appointed or acting as treasurer before the passing of this Act to any court holden under any Act cited in either of the said schedules (A.) and (B.), if not disqualified under this Act, shall be entitled to be the first treasurer of the same court respectively, when holden as a county court under this Act, in every case in which a separate treasurer shall be appointed exclusively for such court, and shall in such case continue to exercise his office, subject to the power of removal provided in this Act.

Appointment of clerks vested in judges subject to approval of lord chancellor

XXIV. And be it enacted, That for every court under the authority of this Act there shall be a clerk, who shall be an attorney of one of her majesty's superior courts of common law, and whom the judge shall be empowered to appoint, subject to the approval of the lord chancellor, and, in case of inability or misbehaviour, to remove, subject to the like approval; and, until otherwise directed by her majesty, with the advice of her privy council, every such clerk shall be paid by fees as herein-after provided; and in cases requiring the same, such assistant clerks as may be necessary, shall be provided and paid by the clerk of the court.

In populous districts lord

XXV. And be it enacted, That it shall be lawful for the

lord chancellor, in populous districts in which it shall appear to him expedient, to direct that two persons shall be appointed to execute jointly the office of clerk, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of court in case of difference between them, each of such persons being qualified as is herein-before provided in the case of a single clerk; and where under the provisions of any Act cited in either of the said schedules (A.) and (B.) more than one clerk is now acting in and for the court holden under such Act, the same number of clerks shall be continued, unless it shall seem expedient to the lord chancellor to order that such number be reduced.

chancellor may direct two clerks to be appointed.

XXVI. And be it enacted, That it shall be lawful for the clerk of any such court with the approval of the judge, or, in case of inability of the clerk to make such appointment, for the judge, to appoint from time to time a deputy, qualified to be appointed clerk of the said court, to act for the clerk of the said court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the clerk of the said court for the time being.

In case of illness, &c. of clerk a deputy may be appointed.

XXVII. And be it enacted, That the clerk of each court, with such assistant clerks as aforesaid in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said court, and keep an account of all proceedings of the court, and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all monies paid into and out of court, and shall enter an account of all such fees, fines, and monies in a book belonging to the court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer.

Duties of clerks.

XXVIII. And be it enacted, That it shall not be lawful for the clerk of any court holden under this Act, or the partner of any such clerk, or any person in the service or employment of such clerk or his partner, to act as treasurer or high bailiff of the court; or for the treasurer, his partner or clerk, or any person in the service or employment of such treasurer or his partner, to act as clerk or high bailiff; or for the high bailiff, his partner or clerk, or any person in the service or employment of such high bailiff or his partner, to act as clerk or treasurer of the court.

Offices of clerk, treasurer, and bailiff not to be conjoined.

Officers not to act as attornies in the court.

XXIX. And be it enacted, that no clerk, treasurer, high bailiff, or other officer of the court, shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court.

Penalty of 50*l.* on non-observance of the two previous enactments.

XXX. And be it enacted, That every person who, being the clerk of any such court, or the partner of such clerk, or a person in the service or employment of any such clerk or of his partner, shall accept the office of treasurer or high bailiff of such court,—or who, being the treasurer of any such court, or the partner of any such treasurer, or a person in the service or employment of any such treasurer or of his partner, shall accept the office of clerk or high bailiff in the execution of this Act,—or who being the high bailiff of such court, or the partner of any such high bailiff, or a person in the service or employment of any such high bailiff or of his partner, shall accept the office of clerk or treasurer in the execution of this Act,—and also every clerk, treasurer, high bailiff, or other officer of any such court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said court,—shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same in any of her majesty's superior courts of record, by action of debt or on the case.

Appointment of bailiffs.

XXXI. And be it enacted, That for every such court there shall be one or more high bailiffs, whom the judge shall be empowered by order of court to appoint, and, in case of inability or misbehaviour, to remove by a like order; and every such high bailiff shall be empowered, subject to the restrictions herein-after contained, by any writing under his hand, to appoint a sufficient number of able and fit persons, not exceeding such number as shall be from time to time allowed by the judge, to be bailiffs, to assist the said high bailiff, and at his pleasure to dismiss all or any of them, and appoint others in their stead; and every bailiff so appointed may also be suspended or dismissed by the judge.

Provision for the high bailiffs of Westminster and Southwark.

XXXII. Provided always, and be it enacted, That, until parliament shall otherwise direct, the high bailiff of *Westminster* shall have the execution of all process issuing out of any of the said courts the jurisdiction of which shall include the city and liberty of *Westminster* or any part thereof, and shall be deemed the high bailiff of such courts; and the high bailiff of *Southwark* shall have the execution of all process issuing out of any of the said courts the jurisdiction of which shall include the borough of *Southwark* or any part thereof, and shall be deemed the high bailiff of

such last-mentioned courts; and no other high bailiff shall be appointed for such courts.

Duties of the high bailiffs, &c.

XXXIII. And be it enacted, That the said high bailiffs or one of them shall attend every sitting of the court, for such time as shall be required by the judge, unless when their absence shall be allowed for reasonable cause by the judge, and shall, by themselves or by the bailiffs appointed to assist them as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the court; and the said high bailiffs and bailiffs shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the court, as herein-after provided, and, subject thereunto, to the order and direction of the judge; and the said high bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the bailiffs and officers appointed to assist them, according to such scale of remuneration as shall be from time to time approved by the judge; and every such high bailiff shall be responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him, in like manner as the sheriff of any county in *England* is responsible for the acts and defaults of himself and his officers.

Provision respecting clerks and high bailiffs of courts under Acts cited in schedules (A.) and (B.)

XXXIV. Provided always, and be it enacted, That the persons holding the offices or performing the duties of clerks and high bailiffs in any court holden under any Act cited in either of the said schedules (A.) and (B.) on the first day of *June* in this year, and who shall continue respectively to hold the same offices or to perform the same duties at the time when such Act shall be repealed under the provisions of this Act, whether or not qualified as herein-before provided, shall be entitled, if not disqualified under this Act, to be the first clerks and high bailiffs of the same court when holden as a county court under this Act, and shall continue to execute their several offices, subject to the power of removal provided in this Act, except that the clerks and high bailiffs already appointed to any court named in the said schedule (A.) shall be removable only for such cause as would have warranted their removal under the Acts according to which their court is now holden; and where, under the provisions of any of the said Acts, more than one clerk was on the said first day of *June*, and shall be, when such Act shall be repealed, under the provisions of this Act, acting in and for any of the said courts, or in and for any district or division of any court, the same persons shall jointly execute the office of clerk of

the same courts as aforesaid, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of court, in case of difference between them: Provided always, that if the clerk of any court cited in the said schedule (A.) shall, within one calendar month next after the repeal of the Act under which it is now holden, decline to accept the office of clerk to the same court as holden under this Act, it shall be lawful to the commissioners of her majesty's treasury, if they shall think fit, to take into consideration the special circumstances of each case, and to award such compensation to be paid to such clerk as under the circumstances they shall think reasonable, in the manner herein provided in the case of persons whose emoluments will be diminished or taken away by this Act.

Provision respecting the officers of the two courts at Bristol.

XXXV. And whereas the jurisdiction of the court of conscience in the city of *Bristol*, under the provisions of an Act passed in the first year of the reign of her majesty, and cited in the schedule (A.) to this Act annexed, extends to the recovery of debts and demands not exceeding forty shillings; and the jurisdiction of the court of requests in the said city, under the provisions of an Act passed in the fifty-sixth year of the reign of King *George* the Third, and also cited in the said schedule (A.), extends to the recovery of debts and demands above forty shillings and not exceeding fifteen pounds: be it enacted, That in case the persons now holding the offices of registrar and clerk and deputy registrar of the said court of conscience shall continue to hold the same offices respectively when a court shall be established in the said city of *Bristol* under the provisions of this Act, they shall be entitled to hold the office and execute the duties of clerks of any such court in all causes and matters relating to debts, claims, and demands not exceeding forty shillings, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of court, in case of difference between them; and in case the person now holding the office of clerk of the said court of requests shall continue to hold the same office at the time when such court shall be established, he shall be entitled to hold the office and execute the duties of clerk of any such court in all causes and matters relating to debts, claims, and demands exceeding forty shillings; and the said persons severally shall be removable only for such cause as would have warranted their removal under the several Acts according to which the said courts are now holden.

Treasurers, clerks, and high bailiffs

XXXVI. And be it enacted, That the treasurer, clerk, and high bailiff of every court holden under this Act, who may receive any monies in the execution of his duty, shall

give security, for such sum and in such manner and form as the commissioners of her majesty's treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all monies received by them under this Act, or which they may become liable to pay for any misbehaviour in their office.

to give security.

XXXVII. And be it enacted, That there shall be payable on every proceeding in the courts holden under this Act, to the judges, clerks, and high bailiffs of the several courts, such fees as are set down in the schedule marked (D.) to this Act annexed, or which shall be set down in any schedule of fees reduced or altered under the power herein-after contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the court house and in the clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and, in default, payment thereof shall be enforced by order of the judge, by such ways and means as any debt or damage ordered to be paid by the court can be recovered; and the fees upon executions shall be paid into court at the time of the issue of the warrant of execution, and shall be paid by the clerk of the court to the bailiff upon the return of the warrant of execution, and not before: Provided always, that it shall be lawful for one of her majesty's principal secretaries of state, with the consent of the commissioners of her majesty's treasury, to lessen the amount of the fees to be taken in the courts holden under this Act in such manner as to him shall seem fit, and again to increase such fees, so that the scale of fees given in the schedule to this Act be not in any case surpassed; and in every court holden under this Act in which the fees allowed to be taken by the judges, clerks, or bailiffs of the court shall appear to be more than sufficient, it shall be lawful for the said secretary of state to order that a certain part only of their fees shall be paid to them respectively, not exceeding, in the case of judges and clerks, the sums herein-after mentioned as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the treasurer of the court, and shall form part of the general fund of the court; but no such order shall be made to reduce the fees of any of the judges, clerks, and officers of any court mentioned in the said schedule (A.) (so long as they shall be paid by fees) below the average amount of their fees or emoluments during the seven years next before the passing of this Act, with a reasonable increase for any increase of

Fees to be taken according to schedule (D.), and tables to be exhibited in conspicuous places.

Fees may be reduced.

Appropriation of surplus fees.

business which they may severally have to perform by reason of this Act.

Compensation for persons whose rights or emoluments will be diminished.

XXXVIII. And be it enacted, That every person who is entitled to any franchise, right of appointment, or office, under any of the Acts under which any court mentioned in the said schedule (A.) is holden—and every person who shall have been entitled to any fees or salary for his services in the execution of any of the same Acts,—or for the issue of any writs to the sheriff out of the high court of chancery—and also every person who is entitled to any franchise or right of appointment to hold office in any court in any district in which the county court had not jurisdiction before the passing of this Act, and in which district a court shall be established under the provisions of this Act,—and also every person holding any office in any such last-mentioned court whose franchise or right of appointment or office shall be affected, abolished, or taken away, or whose emoluments shall be diminished or taken away under the operation of this Act,—shall be entitled to make a claim for compensation to the commissioners of her majesty's treasury within six calendar months after the passing of this Act, or after the alteration of such court; and it shall be lawful for the said commissioners, in such manner as they shall think proper, to inquire what was the nature of the franchise or right of appointment, and what was the tenure of any such office, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the commissioners in each case shall award such gross or yearly sum and for such time as they shall think just to be awarded upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the consolidated fund of the United Kingdom of *Great Britain* and *Ireland:* Provided always, that if any person holding any office in any of the said courts shall be appointed after the passing of this Act to any public office or employment, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended, if the amount of such salary or emoluments is greater than the amount of such compensation, or if not, shall be diminished by the amount of such salary or emoluments: Provided also, that nothing in this Act contained shall be deemed to entitle any person to compensation for the loss or diminution of the profits of any office to which he shall have been appointed under any Act containing a provision, either that he is not to be entitled to compensation for the loss or diminution of the profits of his office, or that such Act should cease on or within a limited time after the passing

of any general Act for the recovery of small debts, or under the provisions of either of the said Acts of the eighth year of her majesty and of the ninth year of her majesty.

Officers of courts may be paid by salaries instead of fees.

XXXIX. And be it enacted, That it shall be lawful for her majesty, with the advice of her privy council, to order that the judges, clerks, bailiffs, and officers of the courts holden under this Act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this Act; and if her majesty shall be pleased, with the advice aforesaid, to make such order, or to order that any such court shall be abolished, or that the district for which any such court is holden shall be consolidated with any other district, or if any Act shall be passed whereby it shall be provided that the said courts or any of them shall be abolished, or otherwise constituted than is provided by this Act, no such clerk or bailiff, nor any judge, county clerk, treasurer, or other officer of any such court, shall be entitled to any compensation on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as judge, assessor, county clerk, treasurer, clerk, bailiff, or other officer, before the passing of this Act, in any of the courts mentioned in the schedule (A.) to this Act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this Act; and in such case all sums payable in the name of fees to such officers of the court as shall be paid by salaries, shall be paid from time to time to the treasurer of the court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the consolidated fund of *Great Britain* and *Ireland*.

If court abolished, no compensation allowed, except in certain cases.

Limiting amount of salaries to be paid under this Act.

XL. And be it enacted, That the greatest salaries to be received in any case by the judges and clerks of the courts holden under this Act, shall be twelve hundred pounds by a judge, and six hundred pounds by a clerk, exclusive of all salaries to his clerks employed in the business of the court, and other expences incidental to his office, unless in the case of any judge or clerk of any such court acting in the same capacity before the passing of this Act in any court mentioned in the said schedule (A.), whose salaries shall not be limited to any sum less than the average amount of

the fees and emoluments of their respective offices during the seven years next before the passing of this Act: Provided always, that it shall be lawful for the commissioners of Her Majesty's treasury to allow in each case such sum as they shall in each case deem reasonable to defray travelling expences, with reference to the size and circumstances of each district.

Fees and fines to be accounted for to treasurer.

XLI. And be it enacted, That the clerk of every court holden under this Act, from time to time as often as he shall be required so to do by the treasurer or judge of the court, and in such form as the treasurer or judge shall require, shall deliver to the treasurer a full account in writing of the fees received in that court under the authority of this Act, and a like account of all fines levied by the court, and of the expences of levying the same, and shall pay over to the treasurer, quarterly or oftener in every year, by order of the court, the monies remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the court to retain for the current expenditure of the court.

Clerk's accounts to be audited and settled by treasurers.

XLII. And be it enacted, That the treasurer of every court holden under this Act shall from time to time, quarterly or oftener, as shall be directed by order of the court, audit and settle the accounts of the clerk and other officers of the court, and shall receive the balance of the various monies which such clerk and other officers shall have received under this Act, and shall pay over to the judge of the court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act, and shall from time to time pay the balance remaining in his hands, or so much thereof as he shall be directed to pay, into such bank or otherwise as shall be directed by the commissioners of her majesty's treasury.

Treasurer of the court to render accounts to audit board.

XLIII. And be it enacted, That the treasurer of every court holden under this Act shall once in every year, and oftener if required, on such day as the commissioners of her majesty's treasury from time to time shall appoint, render to the commissioners for auditing the public accounts of *Great Britain*, a true account in writing of all monies received and of all monies disbursed by him on account of every court holden under this Act of which he is treasurer, during the period comprised in such account, in such form, and with such particulars of receipt and disbursement, or otherwise, as the said commissioners of audit shall from time to time require.

Commissioners of

XLIV. And be it enacted, That the commissioners of

her majesty's treasury shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officers of every court holden under this Act, and for the due accounting for and application of all such balances and other sums of money.

Treasury to direct how balances shall be applied.

XLV. And be it enacted, That the accounts to be kept by the several treasurers on account of the said courts, shall be examined and audited by the commissioners for auditing the public accounts of *Great Britain*, under the powers vested in them under an Act of the twenty-fifth year of the reign of King *George* the Third, intituled *An Act for the better examining and auditing the Public Accounts of this Kingdom*, and under any Act now in force, or otherwise howsoever, except so far as the same are varied by this Act.

Accounts of treasurers to be audited under powers of 25 G. 3, c. 52.

XLVI. And be it enacted, That the clerk of every such court shall once in every year, and oftener if required, on such day as shall be appointed by the commissioners of her majesty's treasury, make out and send to the said commissioners of audit an account of all sums paid over by him to the treasurer of the court, including all unclaimed balances carried to the account of the general fund, as herein-after provided; and every such account, duly vouched by receipts given under the hand of the treasurer, shall be a voucher to charge the treasurer in his account before the said commissioners of audit.

Clerk to send to commissioners of audit an account of all sums paid by him to treasurer.

XLVII. And be it enacted, That it shall not be necessary to declare the accounts of the said treasurers before the chancellor of the exchequer, but the said commissioners of audit shall transmit a statement of every account examined and audited by them under the authority of this Act to the lord high treasurer, or the commissioners of her majesty's treasury for the time being, who having considered such statement, shall return the same to the commissioners of audit, together with his or their warrant, directing them to make up and pass the account, either conformably to the statement, or with such variations as he or they may deem just and reasonable; and the account having been made up pursuant to such directions, and signed by two or more of the said commissioners for auditing the public accounts, shall remain deposited in the audit office, and shall have the same force and validity, and be as efficient in law for all purposes whatsoever, as if the same had been declared according to the usual course by the chancellor of the exchequer; and the said commissioners shall thereupon, as soon as conveniently may be, cause such or the like certificate thereof, in the nature of a quietus, to be made out and delivered, as is now practised by them with regard to declared

Accounts when audited to be sent to treasury.

accounts, and which shall be equally valid and effectual to discharge the accountants, and to all other intents and purposes.

Treasurers, with approval of secretary of state, to provide court houses, offices, &c.

XLVIII. And be it enacted, that the treasurer of any court holden under this Act, for which a court house and offices, with necessary appurtenances, shall not have been already provided, or where such court house and offices are inconvenient or insufficient, shall, as soon as conveniently may be, with the approval of one of her majesty's principal secretaries of state, build, purchase, hire or otherwise provide messuages and lands, with all necessary appurtenances, fit for holding the court therein, and for the offices necessary for carrying on the business of the said court, or instead of providing separate buildings, may, with the like approval, contract with any person, being the owner of or having the control and management of any county or town hall or other building, for the use and occupation thereof, or of so much thereof as may be needed for the purposes of this Act, and subject to such annual rent, and to such conditions as to the repairs, alterations, or improvements of such hall or building, as may be agreed upon; and all lands, messuages, and other real and personal estates and effects belonging to the court, shall vest in the treasurer for the time being, and in his successors in that office, in trust for the purposes of this Act.

Where common gaols are inconvenient, prisons belonging to courts under Acts cited in schedules (A.) and (B.) may be used.

XLIX. And be it enacted, That it shall be lawful for any court holden under this Act, with the approval of one of her majesty's principal secretaries of state, to use as a prison for the purposes of this Act, any prison now belonging to any court holden under any of the Acts cited in the said schedules (A.) and (B.), in all cases where it shall appear to the said secretary of state that the common gaol or house of correction of the county, district, or place in which the court is established is inconveniently situated, or is not applicable for the use of the said courts; and whenever any such prison shall be so allowed to be used, it shall be deemed one of the common gaols of the county for which it shall be used, as if it had been provided, after presentment of the insufficiency of one common gaol for such county, under the provisions of an Act passed in the sixth year of the reign of her majesty, intituled *An Act to amend the Laws concerning Prisons*, or, where such prisons shall be situated within a borough having a separate court of sessions of the peace, it shall be deemed a house of correction for such borough.

5 & 6 Vict. c. 98.

Power for purchasing land.

L. And be it declared and enacted, That the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to the purchase of lands by the treasurer of any such court

for the purposes of this Act, except so much thereof as relates to the purchase and taking of lands otherwise than by agreement; and in construing the said Act, the treasurer, acting with the approval of one of her majesty's principal secretaries of state, shall be deemed the promoter of the undertaking for which such lands are required.

Treasurer empowered to borrow money for the purposes of this Act.

LI. And be it enacted, That for the purpose of defraying the expences of building, purchasing, or providing any messuages and lands for the purposes aforesaid, it shall be lawful for the said treasurer to borrow and take up at interest so much money as he shall find to be necessary, the amount thereof, and the rate of interest in each case, being first allowed by the said commissioners of her majesty's treasury; and the treasurer may enter into and execute such securities as may be required, and the securities so entered into shall be binding on him and his successors in the office of treasurer for securing repayment of the monies borrowed, with interest for the same, out of the general fund herein-after mentioned, and shall enter in a book belonging to the court, to be kept by him for that purpose, the names of the several persons by whom any money shall be advanced for the purpose aforesaid, in the order in which the same shall be advanced; and the monies so borrowed shall be paid off in the same order.

A general fund to be raised for paying off money borrowed.

LII. And be it enacted, That for raising a fund for providing a court house and offices, and for paying off any monies which may be borrowed as aforesaid, and the interest due in respect thereof, the clerk of every court holden under the authority of this Act, in which and while it shall be necessary to raise such fund, shall demand and receive from the plaintiff, in any suit brought in that court, the sum of sixpence when the debt or damage claimed shall exceed twenty shillings and shall not exceed forty shillings, and for every claim exceeding forty shillings one twentieth part thereof, neglecting any sum less than sixpence in estimating such twentieth part, or such other sum in either case, not exceeding the rates herein-before mentioned, as one of her majesty's principal secretaries of state, with the consent of the commissioners of her majesty's treasury, from time to time shall order, which sum, if not paid in the first instance by the plaintiff upon suit brought in the court, may be deducted from the sum recovered for the plaintiff, and shall be considered as costs in the cause; and the clerk of the court shall keep an account of all monies so paid to him, and shall pay over the amount from time to time to the treasurer of the court, and the amount thereof shall accumulate, to form a fund to be called "the General Fund of the county court of at ," and shall be applied in the first place toward paying the

interest of the several sums so borrowed, and in the second place toward paying the rent and other expences necessarily incurred in holding the court, and in the third place toward paying off the several principal sums borrowed, in the order in which they were borrowed, and in the fourth place toward defraying the other expences herein charged on the said general fund, in such manner as the judge, with the approval of one of her majesty's principal secretaries of state, shall direct; and the surplus which shall from time to time accumulate, after providing for all the said expences, shall be paid over to the credit of the consolidated fund of the United Kingdom of *Great Britain* and *Ireland*; subject, nevertheless, to any charge which may arise from any future deficiency of the same fund.

Property of courts in schedules (A.) and (B.) to vest in the treasurer of the county court.

LIII. And be it enacted, That, as soon as a court shall have been established in any district under this Act, all messuages, lands, and tenements, and all real estates and effects, vested in or belonging to the commissioners, clerks, treasurers, trustees, or other officers of any of the courts mentioned in the said schedules (A.) and (B.), which were holden in trust for the purposes of such court, shall vest in or belong to the treasurer of the county court for the time being, and his successors in the said office, in trust for the purposes of this Act, for the like estate and interest, and subject to all the covenants, conditions, and agreements, on which the same were respectively holden; and the said commissioners, clerks, treasurers, trustees, and other officers, their heirs, executors, and administrators, shall be freed and discharged from all such covenants, conditions, and agreements, and from the consequences of their being unable to fulfil any covenants or agreements into which any of them may have lawfully entered in execution of the provisions of any of the said Acts, on or before the repeal of such Act, with respect to their estate or interest in such messuages, lands, tenements, real and personal estates and effects, in consequence of the vesting thereof in the said treasurer; and all monies and securities for money, and other property and effects of any kind whatsoever, in the hands of the commissioners, clerks, treasurers, trustees, or other officers of any such court, shall be paid, transferred, and delivered to the said treasurer, or to such person as he shall appoint to receive the same, and shall be applied in discharging all claims and demands to which the same were liable in the hands of such commissioners, clerks, treasurers, trustees, or other officers, and the residue thereof shall be applied to the same purposes to which the general fund is applicable.

Provisions for out-

LIV. And be it enacted, That it shall be lawful for the treasurer of the county court, with the approval of the com-

missioners of her majesty's treasury, and upon the certificate of the expediency thereof under the hand of the judge, to sell and dispose of all messuages, lands, and tenements which may be vested in him under the provisions of this Act, which shall not be needed for the purposes of this Act, or which the treasurer shall think ought to be sold, for the purpose of better enabling him to discharge any just debts on account of any court of which the constitution shall be altered under this Act, or to provide other and more convenient buildings for holding a county court; and the proceeds of all such sales, and also all monies and securities for money which shall be paid, transferred, or delivered to him on account of any such court as aforesaid, shall be applied towards discharging such debts; and in every case in which at the time of the alteration or the constitution of the court there shall be any just debts owing on account of any such court, or any salaries or annuities legally or equitably chargeable upon or payable out of the fees of such court, or out of any fund to which such fees are payable, over and above what may be discharged by the monies and effects so paid, transferred, or delivered to the treasurer on account of such court, and over and above the proceeds of the sale of any such messuages, lands, and tenements, in case the same or any part thereof shall be sold, such debts, salaries, and annuities shall be treated as if they were debts which had been incurred for the purpose of providing a court house for holding the county court for the district in which the place is included where such court was holden, and shall be liquidated out of the general fund herein-before mentioned, if the same shall be sufficient for that purpose; and any deficiency therein, shall be paid out of the consolidated fund of the United Kingdom of *Great Britain* and *Ireland.*

standing liabilities.

LV. And be it enacted, That the clerk of every court shall have the care of the court house and offices of the court, and shall appoint and have power to dismiss the necessary servants for taking charge of such court house and offices, at such salaries as shall be from time to time authorized by the judge, with the consent of the commissioners of her majesty's treasury; and the clerk of the court, under the direction of the said commissioners, and subject to such regulations as they may require to be enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming the said court house and offices, and for supplying the said court and offices with law and office books and stationery, and for defraying all other necessary expences not otherwise provided for incident to the holding of the said court, and the charge of the court house and offices, and expences thereby incurred, shall

Clerks to have the charge of the court houses, &c. and to appoint and dismiss servants, &c.

be paid out of the general fund of the court: Provided always, that the treasurer or clerk of any court, or the partner of any such treasurer or clerk, or any person in the service or employment of any such treasurer or clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the said courts and offices: Provided also, that no payment for any such charge shall be allowed in the clerk's accounts, until allowed under the hand of the judge.

Judge to hold the court where her majesty shall direct.

LVI. And be it enacted, That the judge of each district shall attend and hold the county court at each place where her majesty shall have ordered that the county court shall be holden within his district, at such times as he shall appoint for that purpose, so that a court shall be holden in every such place once at least in every calendar month, or such other interval as one of her majesty's principal secretaries of state shall in each case order; and notice of the days on which the court shall be holden, shall be put up in some conspicuous place in the court house, and in the office of the clerk of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court house and in the clerk's office.

Notices for holding courts to be put up in a conspicuous place.

Process of the court to be under seal.

LVII. And be it enacted, That for every court holden under this Act, there shall be made a seal of the court, and all summonses and other process issuing out of the said court shall be sealed or stamped with the seal of the court; and every person who shall forge the seal or any process of the court,—or who shall serve or enforce any such forged process, knowing the same to be forged,—or deliver or cause to be delivered to any person any paper falsely purporting to be the copy of any summons or other process of the said court, knowing the same to be false,—or who shall act or profess to act under any false colour or pretence of the process of the said court,—shall be guilty of felony.

Forging the seal or process,—

Felony.

Jurisdiction of the court.

LVIII. And be it enacted, That all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, may be holden in the county court, without writ; and all such actions brought in the said court shall be heard and determined in a summary way in a court constituted under this Act, and according to the provisions of this Act: Provided always, that the court shall not have cognizance of any action of ejectment,—or in which the title to any cor-

poreal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question,—or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed,—or for any malicious prosecution,—or for any libel or slander,—or for criminal conversation,—or for seduction,—or breach of promise of marriage.

Suits to be by plaint.

LIX. And be it enacted, That on the application of any person desirous to bring a suit under this Act, the clerk of the court shall enter in a book, to be kept for this purpose in his office, a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court, according to such form, and be served on the defendant so many days before the day on which the court shall be holden at which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the court, as herein-after provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons, shall vitiate the same, so that the person or place be therein described so as to be commonly known.

Summons may issue, though cause of action may not arise in the district.

LX. And be it enacted, That such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, by leave of the court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned courts.

Processes out of district of court may be served by bailiff of any other court.

LXI. And be it enacted, That any summons or other process, which, under this Act, shall be required to be served out of the district of the court from which the same shall have issued, may be served by the bailiff of any court holden under this Act in any part of *England;* and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued, within the jurisdiction of the court for which he acts.

Proof of service of

LXII. And be it enacted, That service of any summons or other process of the court, which shall require to be

process out of the district, or in the absence of the bailiff.

served out of the district of the court, may be proved by affidavit, purporting to be sworn before any judge of a county court, or before a master extraordinary in chancery, or any person now authorized by law to take affidavits; and the fee for taking such affidavit shall not be more than one shilling, and shall be costs in the cause; and in every case of the unavoidable absence of the bailiff by whom any summons or other process of the court shall have been served, the service of such summons or other process may be proved, if the judge shall think fit, in the same manner as a summons served out of the district of the court, but without additional charge to either of the parties to the suit.

Demands not to be divided for the purpose of bringing two or more suits.

LXIII. And be it enacted, That it shall not be lawful for any plaintiff to divide any cause of action, for the purpose of bringing two or more suits in any of the said courts, but any plaintiff having cause of action for more than twenty pounds, for which a plaint might be entered under this Act if not for more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds; and the judgment of the court upon such plaint, shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

Minors may sue for wages.

LXIV. And be it enacted, That it shall be lawful for any person under the age of twenty-one years, to prosecute any suit in any court holden under this Act, for any sum of money not greater than twenty pounds which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

Cases of partnership and intestacy.

LXV. And be it enacted, That the jurisdiction of the county court under this Act shall extend to the recovery of any demand, not exceeding the sum of twenty pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.

Executors may sue and be sued.

LXVI. And be it enacted, That it shall be lawful for any executor or administrator to sue and be sued in any court holden under this Act, in like manner as if he were a party in his own right; and judgment and execution shall be such as in the like case would be given or issued in any superior court.

No privilege allowed.

LXVII. And be it enacted, That no privilege, except as hereinafter excepted, shall be allowed to any person, to exempt him from the jurisdiction of any court holden under this Act,

LXVIII. And be it enacted, That where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process; and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover, in the county court under this Act, contribution from any other person jointly liable with him.

One of several persons liable may be sued.

LXIX. And be it enacted, That the judge of the county court shall be the sole judge in all actions brought in the said court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned; and no suitors shall, in any case, be summoned to hold, or have, any jurisdiction in any court holden under this Act.

Judge alone to determine all questions unless a jury be summoned.

LXX. And be it enacted, That in all actions where the amount claimed shall exceed five pounds, it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action; and in all actions where the amount claimed shall not exceed five pounds, it shall be lawful for the judge, in his discretion, on the application of either of the parties, to order that such action be tried by a jury; and in every case, such jury shall be summoned according to the provisions hereinafter contained: provided always, that the party requiring a jury to be summoned shall give to the clerk of the court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the court as hereinafter provided; and the said clerk shall cause notice of such demand of a jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for either party to prove, on the trial, that such notice was communicated to the other party by the clerk.

Actions may be tried by a jury when parties require it.

LXXI. And be it enacted, That every party requiring any jury to be summoned shall, at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the clerk of the court the sum of five shillings for payment of the jury, and such sum shall be considered as costs in the cause, unless otherwise ordered by the judge.

Party requiring jury to make a deposit.

Who shall be jurors.

LXXII. And be it enacted, That the sheriff of every county, and the high bailiffs of *Westminster* and *Southwark*, shall cause to be delivered to the clerk of the court a list of persons qualified and liable to serve as jurors in the courts of assize and nisi prius for their county, city, and borough respectively, within fourteen days from the receipt of the jury book from the clerk of the peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the court, for which list the said sheriffs and high bailiffs shall be entitled to receive out of the general fund of the court a fee after the rate of two-pence for every folio of seventy-two words; and whenever a jury shall be required, the clerk of the court shall cause so many of the persons named in the list, as shall be needed in the opinion of the judge, to be summoned to attend the court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as shall be impannelled to try any cause or causes an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the judge shall direct, not being more than five pounds for each default; and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: provided always, that no person shall be summoned or compelled to serve on such jury more than twice within one year, or who shall have been summoned and shall have attended upon any jury at the assizes, or any court of nisi prius, or at the central criminal court, for the same county, within six calendar months next before the delivery of such summons.

Number of the jury.

LXXIII. And be it enacted, That whenever there are any jury trials, five jurymen shall be impannelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the said court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause, shall be entitled to his lawful challenge against all or any of the said jurors, in like manner as he would be entitled in any superior court; and the jurymen so sworn shall be required to give an unanimous verdict.

Proceedings on hearing the plaint.

LXXIV. And be it enacted, That on the day in that behalf named in the summons, the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in court, the judge shall proceed in a summary way to try the cause,

and give judgment, without further pleading or formal joinder of issue.

LXXV. And be it enacted, That no evidence shall be given by the plaintiff, on the trial of any such cause as aforesaid, of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued.

No evidence to be given that is not in summons.

LXXVI. And be it enacted, That no defendant in any court holden under this Act, shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff,—or to set up by way of defence and to claim and have the benefit of infancy,—coverture,—or any statute of limitations,—or of his discharge under any statute relating to bankrupts,—or any act for relief of insolvent debtors,—without the consent of the plaintiff, unless such notice thereof (as shall be directed by the rules made for regulating the practice of the court) shall have been given to the clerk of the court; and in every case in which the practice of the court shall require such notice to be given, the clerk of the court shall, as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff, by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove, on the trial, that such notice was communicated to the plaintiff by the clerk.

Notices to be given to the clerk of special defences, who shall communicate the same to the plaintiff.

LXXVII. And be it enacted, that the judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators or umpire, shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge; provided that the judge may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

Suits may be settled by arbitration.

LXXVIII. And be it enacted, that five of the judges of the superior courts of common law at *Westminster*,—including the lord chief justice of the court of Queen's Bench, the lord chief justice of the court of Common Pleas, and the lord chief baron of the court of Exchequer, or one of the said chiefs at the least,—shall have power to

Forms of procedure in courts to be framed by the judges.

make and issue all the general rules for regulating the practice and proceedings of the county courts holden under this Act,—and also to frame forms for every proceeding in the said courts for which they shall think it necessary that a form be provided,—and also for keeping all books, entries, and accounts to be kept by the clerks of the said courts,—and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be observed and used in all the courts holden under this Act; and in any case not expressly provided for herein, or by the said rules, the general principles of practice in the superior courts of common law, may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts.

Proceedings if plaintiff does not appear or prove his case.

LXXIX. And be it enacted, That if, upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think fit; and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

Proceedings if the defendant does not appear.

LXXX. And be it enacted, That if, on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: provided always, that the judge, in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or

costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose.

LXXXI. And be it enacted, That the judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may from time to time adjourn any court, or the hearing or further hearing of any cause, in such manner as to the judge may seem fit.

Judge may grant time, or may adjourn.

LXXXII. And be it enacted, That it shall be lawful for the defendant in any action brought under this Act, within such time as shall be directed by the rules made for regulating the practice of the court, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the court, and an order shall thereupon be made by the court for the payment of such costs by the plaintiff.

Defendant may pay money into court.

Notice of such payment to be given to plaintiff.

LXXXIII. And be it enacted, That on the hearing or trial of any action, or on any other proceeding under this Act, the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court.

Parties and others may be examined.

LXXXIV. And be it enacted, That every person who, in any examination upon oath or solemn affirmation before any judge of the county court, shall wilfully and corruptly give false evidence, shall be deemed guilty of perjury.

False evidence, perjury.

LXXXV. And be it enacted, That either of the parties to the suit or any other proceeding under this Act, may obtain, at the office of the clerk of the court, summonses to witnesses, to be served by one of the bailiffs of the court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

Summonses to witnesses.

Penalty on witnesses neglecting summons.

LXXXVI. And be it enacted, That every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules or practice of the courts, and to whom at the same time payment, or a tender of payment, of his expences shall have been made, on such scale of allowance as shall be from time to time settled by the general rules of practice of the court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced,—and also every person present in court, who shall be required to give evidence, and who shall refuse to be sworn and give evidence,—shall forfeit and pay such fine, not exceeding ten pounds, as the judge shall set on him; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the court in which the fine was imposed.

Fines how to be enforced and accounted for.

LXXXVII. And be it enacted, That payment of any fine imposed by any court under the authority of this Act, may be enforced upon the order of the judge, in like manner as payment of any debt adjudged in the said court, and shall be accounted for as herein provided.

Costs to abide the event of the action.

LXXXVIII. And be it enacted, That all the costs of any action or proceeding in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties, in such manner as the judge shall think fit, and, in default of any special direction, shall abide the event of the action; and execution may issue for the recovery of any such costs, in like manner as for any debt adjudged in the said court.

Judgments how far final.

LXXXIX. And be it enacted, That every order and judgment of any court holden under this Act, except as herein provided, shall be final and conclusive between the parties; but the judge shall have power to nonsuit the plaintiff, in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

No actions to be removed into superior

XC. And be it enacted, That no plaint entered in any court holden under this Act shall be removed or removable from the said court into any of her majesty's superior courts of record, by any writ or process, unless the debt or damage claimed shall exceed five pounds,—and then only by

leave of a judge of one of the said superior courts, in cases which shall appear to the judge fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms, as he shall think fit.

courts but on certain conditions.

XCI. And be it enacted, That no person shall be entitled to appear for any other party to any proceeding in any of the said courts,—unless he be an attorney of one of her majesty's superior courts of record,—or a barrister-at-law instructed by such attorney on behalf of the party,—or, by leave of the judge, any other person allowed by the judge to appear instead of such party; but no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel for any other person, in any proceeding in any court holden under this Act; and no person, not being an attorney admitted to one of her majesty's superior courts of record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs, unless the debt or damage claimed shall be more than five pounds, or more than fifteen shillings in any case within the summary jurisdiction given by this Act; and in no case shall any fee, exceeding one pound three shillings and sixpence, be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs, in the case of a plaintiff where less than five pounds is recovered, or in the case of a defendant where less than five pounds is claimed, or in any case unless by order of the judge.

Who may appear for any party in the superior courts.

XCII. And be it enacted, That the judge may make orders concerning the time or times, and by what instalments, any debt or damages or costs, for which judgment shall be obtained in the said court, shall be paid; and all such monies shall be paid into court, unless the judge shall otherwise direct.

Court may make orders for payment by instalments.

XCIII. And be it enacted, That if there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments.

Cross judgments.

Court may award execution against goods.

XCIV. And be it enacted, That whenever the judge shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the clerk of the said court, at the request of the party prosecuting such order, shall issue under the seal of the court a writ of fieri facias, as a warrant of execution, to the high bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied, by distress and sale of the goods and chattels of such party, such sum of money as shall be so ordered, wheresoever they may be found within the district of the court, whether within liberties or without, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

Execution, not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.

XCV. And be it enacted, That if the judge shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order; and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the judge shall order, either at the time of making the original order, or at any subsequent time, under the seal of the court.

What goods may be taken in execution.

XCVI. And be it enacted, That every bailiff or officer executing any process of execution, issuing out of the said county court, against the goods and chattels of any person, may by virtue thereof seize and take—any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of five pounds, which shall to that extent be protected from such seizure),—and may also seize and take any money or bank notes (whether of the Bank of *England* or of any other bank),—and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

Securities seized to be held by high bailiff.

XCVII. And be it enacted, That the high bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been

otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.

XCVIII. And be it enacted, That it shall be lawful for any party who has obtained any unsatisfied judgment or order, in any court held by virtue of this Act, or under any Act repealed by this Act, for the payment of any debt or damages or costs, to obtain a summons from any county court within the limits of which any other party shall then dwell or carry on his business, (such summons to be in such form as shall be directed by the rules made for regulating the practice of the county courts as herein provided, and to be served personally upon the person to whom it is directed,) requiring him to appear at such time as shall be directed by the said rules, to answer such things as are named in such summons; and if he shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid; and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

Commitment for frauds, &c.

XCIX. And be it enacted, That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid,—or if he shall not make answer touching the same to the satisfaction of such judge,—or if it shall appear to such judge, either by the examination of the party or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust,—or has wilfully contracted such debt or liability, without having had at the same time a reasonable expectation of being able to pay or discharge the same,—or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall

have charged, removed, or concealed the same, with intent to defraud his creditors or any of them,—or if it shall appear to the satisfaction of the judge of the said court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power herein-after provided,—it shall be lawful for such judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the court, for any period not exceeding forty days.

Power of judge to rescind or alter orders.

C. And be it enacted, That it shall be lawful for the judge of any court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such judge may think reasonable and just.

Power to examine and commit at hearing of the cause.

CI. And be it enacted, That in every case where the defendant in any suit brought in any county court shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the judge at the hearing of the cause, or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things herein-before mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions herein-before contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained, as herein-before mentioned.

Mode of issuing and executing warrants of commitment.

CII. And be it enacted, That whenever any order of commitment shall have been made as aforesaid, the clerk of the said court shall issue under the seal of the court a warrant of commitment, directed to one of the bailiffs of any county court, who by such warrant shall be empowered to take the body of the person against whom such order

shall be made; and all constables and other peace officers, within their several jurisdictions, shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol, house of correction, and prison mentioned in any such order, shall be bound to receive and keep the defendant therein until discharged under the provisions of this Act, or otherwise by due course of law; and no protection, order, or certificate, granted by any court of bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last-mentioned order.

Imprisonment not to operate as a satisfaction for the debt, &c.

CIII. And be it enacted, That no imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

How execution may be had out of the jurisdiction of the court.

CIV. And be it enacted, That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party, or his goods and chattels, shall be out of the jurisdiction of the court, it shall be lawful for the high bailiff of the court to send such warrant of execution or of commitment to the clerk of any other court constituted under this Act, within the jurisdiction of which such party, or his goods and chattels, shall then be or believed to be, with a warrant thereto annexed, under the hand of the high bailiff and seal of the court from which the original warrant issued, requiring execution of the same; and the clerk of the court to which the same shall be sent, shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court, and thereupon such last-mentioned high bailiff shall be authorized and required to act in all respects, as if the original warrant of execution or commitment had been directed to him by the court of which he is the high bailiff, and shall, within such time as shall be specified in the rules of practice, return to the high bailiff of the court from which the same originally issued, what he shall have done in the execution of such process, and, in case a levy shall have been made, shall, within such time as shall be specified in the rules of practice, pay over all monies, received in pursuance of the warrant, to the high bailiff of the court from which the same shall have originally issued, retaining the fees for execution of the

process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the gaol or house of correction or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant.

Power to judge to suspend execution in certain cases.

CV. And be it enacted, That if it shall at any time appear to the satisfaction of the judge, by the oath or affirmation of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

Regulating the sale of goods taken in execution.

CVI. And be it enacted, That no sale of any goods, which shall be taken in execution as aforesaid, shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale, the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff, to be put in possession by the bailiff; and it shall be lawful for the high bailiff, from time to time as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act, as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression; and the judge or high bailiff may dismiss any person, broker, or appraiser so appointed; and no goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant of execution, except by one of the brokers or appraisers so appointed; and the brokers or appraisers so appointed shall be entitled to have, out of the produce of the goods so distrained or sold,—sixpence in the pound on the value of the goods for the

appraisement thereof, whether by one broker or more, over and above the stamp duty,—and for advertisements, catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.

CVII. And be it enacted, That so much of an Act passed in the eighth year of the reign of Queen *Anne*, intituled *An Act for the better Security of Rents, and to prevent Frauds committed by Tenants*, as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any court holden under this Act; but the landlord of any tenement in which any such goods shall be so taken, shall be entitled, by any writing under his hand or under the hand of his agent, to be delivered to the bailiff or officer making the levy, which writing shall state the terms of holding, and the rent payable for the same, to claim any rent in arrear then due to him, not exceeding the rent of four weeks where the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment, where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made, the bailiff or officer making the levy shall distrain as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this Act, and shall not proceed to sell the same or any part thereof within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the overplus of such sale (if any), and also the residue of the goods, shall be returned as in other cases of distress for rent, and replevin thereof; and for every such additional distress for rent in arrear, the high bailiff of the court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act for making such distress, and keeping possession thereof, the fees allowed by an Act passed in the fifty-seventh year of the reign of King *George* the Third, intituled *An Act to regulate the Costs of Distresses levied for Payment of small Rents.*

As to the liability of goods taken in execution under 8 Anne, c. 17.

Landlords may claim certain rents in arrear.

Bailiffs making levies may distrain for rent and costs.

In case of replevins.

57 G. 3, c. 93.

CVIII. And be it enacted, That no judgment or execution shall be stayed, delayed, or reversed, upon or by any writ of error, or supersedeas thereon, to be sued for the reversing of any judgment given in any court holden under the provisions of this Act.

No execution shall be stayed by writ of error.

CIX. And be it enacted, That in or upon every warrant

Execution to be super-

seded on payment of debt and costs.

of execution issued against the goods and chattels of any person whomsoever, the clerk of the court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sums allowed by this Act as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued, shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the clerk of the court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

Debtor to be discharged from custody upon payment of debt and costs.

CX. And be it enacted, That any person imprisoned under this Act, who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the clerk of the court, by leave of the judge of the court in which the order of imprisonment was made.

Minutes of proceedings to be kept.

CXI. And be it enacted, That the clerk of every court holden under this Act shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court; and such entries in the said book, or a copy thereof bearing the seal of the court, and purporting to be signed and certified as a true copy by the clerk of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

Suitors' money unclaimed in six years to go to general fund.

CXII. And be it enacted, That the clerk or clerks of every such court shall in the month of *March* in each year make out a correct list of all sums of money belonging to suitors in the court, which shall have been paid into court, and which shall have remained unclaimed for five years before the first day of the month of *January* then last past, specifying the names of the parties for whom or on whose account the same were so paid into court; and a copy of such list shall be put up and remain, during court hours,

in some conspicuous part of the court house, and at all times in the clerk's office; and all sums of money which shall have been paid into any such court, to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years before the passing of this Act, and which are now in the hands of any commissioner, trustee, judge, or officer of such court, or otherwise held in trust for such suitors, and all further sums of money which shall hereafter be paid into any such court, to the use of any suitor or suitors thereof, shall, if unclaimed for the period of six years after the same shall have been so paid into court, be applicable as part of the general fund of the court, and shall be carried to the account of such fund, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant or feme covert, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

Power of committal for contempt.

CXIII. And be it enacted, That if any person shall wilfully insult the judge, or any juror, or any bailiff, clerk, or officer of the said court, for the time being, during his sitting or attendance in court, or in going to or returning from the court,—or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court,—it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders under this Act, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds, for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

Penalty for assaulting bailiffs, or rescuing goods taken in execution.

CXIV. And be it enacted, That if any officer or bailiff of any court holden under this Act, shall be assaulted while in the execution of his duty,—or if any rescue shall be made or attempted to be made of any goods levied under process of the court,—the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the court, or before a justice of the peace as herein-after provided; and it shall be lawful for the bailiff of the court or any peace officer, in any such case, to take the offender into custody (with or without warrant), and bring him before such court or justice accordingly.

Bailiffs made answerable for escapes, and neglect to levy execution.

CXV. And be it enacted, That in case any bailiff of the said court who shall be employed to levy any execution against goods and chattels, shall, by neglect, or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission, (and the fact alleged being proved to the satisfaction of the court on the oath of any credible witness,) the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

Remedies against, and penalties on, bailiffs and other officers for misconduct.

CXVI. And be it enacted, That if any clerk, bailiff, or officer of the court, acting under colour or pretence of the process of the said court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just,—and also, if he shall think fit, to impose such fine upon the clerk, bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

Penalty on officers taking fees besides those allowed.

CXVII. And be it enacted, That every treasurer, clerk, bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said court, and, in the case of a clerk, treasurer, or high bailiff, on allowance of the finding of the court by the lord chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

CXVIII. And be it enacted, That if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under this Act, or in respect of the proceeds or value thereof,—by any landlord for rent,—or by any person not being the party against whom such process has issued, it shall be lawful for the clerk of the court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of her majesty's superior courts of record, or in any local or inferior court, in respect of such claim, shall be stayed, and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the county court; and the judge of the county court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such court.

Claims as to goods taken in execution to be adjudicated in court.

CXIX. And be it declared and enacted, That all actions of replevin, in cases of distress for rent in arrear or damage faisant, which shall be brought in the county court, shall be brought without writ in a court held under this Act.

Actions of replevin may be brought without writ.

CXX. And be it enacted, That in every such action of replevin, the plaint shall be entered in the court holden under this Act for the district wherein the distress was taken.

Plaints where to be entered.

CXXI. And be it enacted, That in case either party to any such action of replevin shall declare to the court in which such action shall be brought,—that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question,—or that the rent or damage in respect of which the distress shall have been taken is more than the sum of twenty pounds,—and shall become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sums as to the judge shall seem reasonable, (regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage), to prosecute the suit with effect and without delay, and to prove before the court by which such suit shall be tried that such title as

How actions of replevin may be removed.

aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds,—then, and not otherwise, the action may be removed before any court competent to try the same, in such manner as hath been accustomed.

Possession of small tenements may be recovered by plaint in county court.

CXXII. And be it enacted, That when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of fifty pounds by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit,—and such tenant, or, (if such tenant do not actually occupy the premises, or occupy only a part thereof), any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively,—it shall be lawful for the landlord or his agent to enter a plaint in the county court to be holden under this Act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary,—and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent,—it shall be lawful for such landlord or agent to give to the court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant under the seal of the court to any bailiff of the court, requiring and authorizing him, within a period to be therein named, (not less than seven or more than ten clear days from the date of such warrant,) to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly: Provided always, that entry upon any such warrant shall not be made on a *Sunday*, *Good Friday*, or *Christmas Day*, or at any time except between the hours of nine in the morning and four in the afternoon: Provided also, that nothing herein contained shall be deemed to protect any person, by whom any such warrant shall be sued out of the county court, from any action which may be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, where such person had not, at

If tenant, &c. neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same.

the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

CXXIII. And be it enacted, That such summons as last aforesaid may be served either personally, or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid; provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person or persons respectively.

The manner in which such summons shall be served.

CXXIV. And be it enacted, That it shall not be lawful to bring any action or prosecution against the judge or against the clerk of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

Judges, clerks, or bailiffs, or other officers not liable to actions on account of proceedings taken.

CXXV. And be it enacted, That where the landlord, at the time of applying for such warrant as aforesaid, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit; provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict,—and that if proved, but assessed by the jury at any sum not exceeding five shillings,—the plaintiff shall recover no more costs than damages, unless the judge, before whom the trial shall have been holden, shall certify that in his opinion full costs ought to be allowed.

Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.

CXXVI. And be it enacted, That in every case in which the person by whom any such warrant shall be sued out of the county court, had not at the time of suing out the same lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a

How execution of warrant of possession may be stayed.

trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sum as to the judge shall seem reasonable, (regard being had to the value of the premises, and to the probable cost of such action), to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.

Proceedings on the bond for staying warrant of possession, &c.

CXXVII. And be it enacted, That every bond given on the removal of any action out of the county court,—or upon staying the execution of any such warrant of possession as aforesaid,—or on moving for a new trial,—or to set aside a verdict, judgment, or nonsuit,—shall be made to the other party to the action, at the costs of such other party, and shall be approved by the judge, and attested under the seal of the court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which such bond was given, the judge before whom such proceeding shall be had shall not certify upon the record in court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt, and recover thereon: Provided always, that the court in which such action as last aforesaid shall be brought, may, by a rule of court, give such relief to the parties liable upon such bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to such bond.

Concurrent jurisdiction with superior courts.

CXXVIII. And be it enacted, That all actions and proceedings, which before the passing of this Act might have been brought in any of her majesty's superior courts of record, where the plaintiff dwells more than twenty miles from the defendant,—or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought,—or where any officer of the county court shall be a party, (except in respect of any claim to any goods and chattels taken in execution of the process of the court, or the proceeds or value thereof),—may be brought and determined in any such superior court, at the election of the party suing or proceeding, as if this Act had not been passed.

CXXIX. And be it enacted, That if any action shall be commenced, after the passing of this Act, in any of her majesty's superior courts of record, for any cause other than those lastly herein-before specified, for which a plaint might have been entered in any court holden under this Act, and a verdict shall be found for the plaintiff for a sum less than twenty pounds if the said action is founded on contract, or less than five pounds if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge, who shall try the cause, shall certify on the back of the record, that the action was fit to be brought in such superior court.

As to actions brought for small debts in superior courts.

CXXX. And be it enacted, That all penalties, fines, and forfeitures by this Act inflicted or authorized to be imposed (the manner of recovering and applying whereof is not hereby otherwise particularly directed) shall, upon proof before any justice of the peace, having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed, either by the confession of the party offending or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice; and the overplus (if any), after such penalties, fines, and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

Penalties and costs to be recovered before a justice, and levied by distress.

CXXXI. And be it enacted, That if any such penalties, fines, and forfeitures respectively shall not be paid forthwith upon conviction, it shall be lawful for such justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, (such day not being more than eight days from the time of taking any such security,) which security such justice shall be empowered to take by way of recognizance or otherwise as to him shall seem fit.

In default of security, offender may be detained till return of warrant of distress.

CXXXII. And be it enacted, That if upon return of such warrant, it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of such justice, either by confession of the offender or otherwise, that he hath not within the jurisdiction of such

In default of distress, offender may be committed.

justice sufficient goods and chattels whereon to levy all such penalties, forfeitures, costs, and charges, such justice may, at his discretion, without issuing any warrant of distress, commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied.

Penalties not otherwise applied, to be paid into the general fund.

CXXXIII. And be it enacted, That the monies arising from any such penalties, forfeitures, and fines as aforesaid, when paid and levied, shall (if not by this Act directed to be otherwise applied) be from time to time paid to the clerk of the court, and shall be applied in aid of the general fund thereof.

Justices may proceed by summons in the recovery of penalties.

CXXXIV. And be it enacted, That in all cases in which by this Act any penalty or forfeiture is made recoverable before a justice of the peace, it shall be lawful for such justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons, without information in writing, shall be as valid and effectual to all intents and purposes, as if an information in writing had been exhibited.

Form of conviction.

CXXXV. And be it enacted, That in all cases where any conviction shall be had for any offence committed against this act, the form of conviction may be in the words or to the effect following; (that is to say,)

> "Be it remembered, That on this —— day of —— in the year of our Lord —— *A. B.* is convicted before —— of her majesty's justices of the peace for the —— [*or* before a judge appointed under an Act passed in the —— year of the reign of her majesty Queen *Victoria*, intituled *here insert the title of this Act*,] of having [*state the offence*]; and I [*or* we] the said ——, do adjudge the said —— to forfeit and pay for the same the sum of ——, or to be committed to —— for the space of ——. Given under —— hand and seal the day and year aforesaid."

Proceedings not invalid for want of form.

CXXXVI. And be it enacted, That no order, verdict, or judgment, or other proceeding, made concerning any of the matters aforesaid, shall be quashed or vacated for want of form.

CXXXVII. And be it enacted, That where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not unlawful for want of form.

CXXXVIII. And for the protection of persons acting in the execution of this Act, be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

Limitation of actions for proceedings in execution of this Act.

CXXXIX. And be it enacted, That if any person shall bring any suit in any of her majesty's superior courts of record, in respect of any grievance committed by any clerk, bailiff, or officer of any court holden under this Act, under colour or pretence of the process of the said court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of twenty pounds, no costs shall be awarded to the plaintiff in such action, unless the judge shall certify in court upon the back of the record that the action was fit to be brought in such superior court.

Provision for the protection of officers of the court.

CXL. Provided always, and be it enacted, That nothing in this Act contained shall be construed to alter or affect the rights or privileges of the chancellor, masters, and scholars of the universities of *Oxford* or *Cambridge* respectively as by law possessed, or the jurisdiction of the courts of the chancellors or vice chancellors of the said universities, as holden under the respective charters of the said universities, or otherwise.

Act not to affect rights of universities of Oxford or Cambridge.

CXLI. Provided always, and be it declared and enacted,

Nothing to affect the

courts of the wardens of the stannaries.

That nothing in this Act contained shall be construed to affect the courts of the lord warden or of the vice warden of the stannaries of *Cornwall*; but this provision shall not be deemed to prevent the establishment of any court under this Act within the said stannaries, or to limit or affect the jurisdiction of any court so established under this Act.

Interpretation of Act.

CXLII. And be it enacted, That in construing this Act,—all things directed or authorized to be done by or with respect to the lord chancellor, shall and may be done by or with respect to a lord keeper or the first commissioner for the custody of the great seal of the United Kingdom of *Great Britain* and *Ireland*;—and all things directed or authorized to be done by or with respect to the commissioners of her majesty's treasury, shall and may be done by and with respect to three or more of the said commissioners or the lord high treasurer;—and the word "person" shall be understood to mean a body politic, corporate, or collegiate, as well as an individual;—and every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing;—and every word importing the masculine gender shall, where necessary, be understood to mean a female as well as a male;—and the words "county court" shall be understood to mean any court holden under this Act;—and the term "landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion;—and the word "clerk" shall be understood to mean "chief clerk," or "registrar;"—and the words "attorney at law," shall be understood to include a solicitor in any court of equity;—and the word "agent," shall be understood to mean any person usually employed by the landlord in the letting of lands, or in the collection of the rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord;—and the word "bailiff," shall be understood to include high bailiff;—unless in any of these cases there be something in the context inconsistent with such meaning.

Act may be amended, &c.

CXLIII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this session of parliament.

SCHEDULES *to which this Act refers.*

SCHEDULE (A.)

Acts for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent; that is to say,

ashton-under-Lyne -	- 48 Geo. 3, c. xcviii.
ath - - - -	- 45 Geo. 3, c. lxvii.
everley - - -	- 46 Geo. 3, c. cxxxv.
irmingham - -	- 47 Geo. 3, c. xiv.
lackheath - -	- 47 Geo. 3, c. iv.
olingbroke and Horncastle	- 47 Geo. 3, sess. 2, c. lxxviii.
oston - - -	- 47 Geo. 3, sess. 2, c. i.
radford - - -	- 47 Geo. 3, sess. 2, c. xxxix.
ristol - - -	- 56 Geo. 3, c. lxxvi.
ristol - - -	- 7 Will. 4 & 1 Vict. c. lxxxiv.
rixton - - -	- 46 Geo. 3, c. lxxxviii.
roseley - - -	- 22 Geo. 3, c. xxxvii.
anterbury - -	- 25 Geo. 2, c. xlv.
hippenham - -	- 5 Geo. 3, c. ix.
rencester - -	- 32 Geo. 3, c. lxxvii.
ridaheath - - -	- 48 Geo. 3, c. l.
al - - - -	- 26 Geo. 3, c. xviii.
erby - - -	- 6 Geo. 3, c. xx.
ancaster - - -	- 4 Geo. 3, c. xl.
ivor - - -	- 24 Geo. 3, c. viii.
clesall - - -	- 48 Geo. 3, c. ciii.
oe - - -	- 47 Geo. 3, c. xxxvii.
/, Isle of - -	- 18 Geo. 3, c. xxxvi.
eter - - -	- 13 Geo. 3, c. xxvii.
versham - -	- 25 Geo. 3, c. vii.
lkestone - -	- 26 Geo. 3, c. xcviii.
oucester - -	- 1 Will. & Mary, c. xviii.
avesend - -	- 47 Geo. 3, sess. 2, c. xl.
imsby, Great - -	- 46 Geo. 3, c. xxxvii.
gnaby - - -	- 18 Geo. 3, c. xxxiv.
lesowen - -	- 47 Geo. 3, c. xxxvi.
wich - - -	- 47 Geo. 3, sess. 2, c. lxxix.
lderminster - -	- 12 Geo. 3, c. lxvi.
ng's Lynn - -	- 10 Geo. 3, c. xx.
ngston-upon-Hull -	- 48 Geo. 3, c. cix.
'kby in Kendal -	- 4 Geo. 3, c. xli.
coln - - -	- 24 Geo. 2, c. xvi.
erpool - - -	- 6 & 7 Will. 4, c. cxxxv.
nchester - -	- 48 Geo. 3, c. xliii.

Margate - - -	- 47 Geo. 3, sess. 2, c. vii.
Middlesex - - -	- 23 Geo. 2, c. xxxiii.
Newcastle-upon-Tyne -	- 1 Will. & Mary, c. xvii.
Norwich - - -	- 12 & 13 Will. 3, c. vii.
Old Swinford - -	- 17 Geo. 3, c. xix.
Pontefract Honor -	- 2 & 3 Vict. c. lxxxv.
Poulton - - -	- 10 Geo. 3, c. xxi.
Rochester - - -	- 48 Geo. 3, c. li.
Saint Albans - -	- 25 Geo. 2, c. xxxviii.
Saint Briavels - -	- 5 & 6 Vict. c. lxxxiii.
Sandwich - - -	- 47 Geo. 3, c. xxxv.
Sheffield - - -	- 48 Geo. 3, c. ciii.
Shrewsbury - -	- 23 Geo. 3, c. lxxlii.
Southwark and East Brixton,	4 Geo. 4, c. cxxiii.
Stockport - - -	- 46 Geo. 3, c. cxiv.
Tower Hamlets - -	- 2 Will. 4, c. lxv.
Westbury - - -	- 48 Geo. 3, c. lxxxviii.
Westminster - -	- 24 Geo. 2, c. xlii.
Wight, Isle of - -	- 46 Geo. 3, c. lxvi.
Wolverhampton -	- 48 Geo. 3, c. cx.
Wraggoe - - -	- 19 Geo. 3, c. xliii.
Yarmouth, Great -	- 31 Geo. 2, c. xxiv.

Schedule (B.)

Acts for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent thereto; (that is to say,)

Aberford - - -	2 & 3 Vict. c. lxxxvi. 3 Vict. c. xxxiii.
Ashby-de-la-Zouch -	- 1 Vict. c. xv.
Barnsley - - -	- 1 & 2 Vict. c. xc.
Belper - - -	- 2 & 3 Vict. c. xcviii.
Blackburn - - -	- 4 & 5 Vict. c. lxvii.
Blackheath - -	6 & 7 Will. 4, c. cxx. 1 & 2 Vict. c. lxxxix.
Bolton - - -	- 3 Vict. c. xviii.
Brighton - - -	- 3 Vict. c. x.
Burnley - - -	- 4 & 5 Vict. c. lxxxiii.
Bury - - - -	- 2 & 3 Vict. c. ci.
Chesterfield - -	- 2 & 3 Vict. c. civ.
Crediton - - -	- 8 & 9 Vict. c. lxxix.
East Retford - -	- 4 & 5 Vict. c. lxxxvii.
Eckington - -	- 2 & 3 Vict. c. ciii.
Exeter - - -	- 4 & 5 Vict. c. lxxiii.

Gainsburgh - - -	4 & 5 Vict. c. lxxxvi.
Glossop - - - -	2 & 3 Vict. c. lxxxviii.
Grantham - - - -	2 & 3 Vict. c. lxxxix.
Halifax - - - -	2 & 3 Vict. c. cvi.
Hatfield - - - -	4 & 5 Vict. c. lxxiv.
Hinckley - - - -	7 Will. 4, c. viii.
Hyde - - - -	3 & 4 Will. 4, c. cxix.
Kingsnorton - - -	4 & 5 Vict. c. lxxv.
Launceston - - -	4 & 5 Vict. c. lxxvi.
Leicester - - -	6 & 7 Will. 4, c. cxxiii. 7 Will. 4, c. vii.
Loughborough - - -	7 Will. 4, c. ix.
Newark - - - -	4 & 5 Vict. c. lxxix.
New Sarum - - -	4 & 5 Vict. c. lxxxiv.
New Sleaford - - -	4 & 5 Vict. c. lxxxv.
Newton Abbott - - -	3 Vict. c. xxv.
Nottingham - - -	2 & 3 Vict. c. cv.
Oakham - - - -	1 Vict. c. xxxvi.
Prestbury Division of the Hundred of Macclesfield	6 Will. 4, c. xiii.
Prestwich-cum-Oldham -	2 & 3 Vict. c. c.
Roborough - - -	7 Will. 4, c. lxii.
Rochdale - - - -	2 & 3 Vict. c. xc.
Rotherham - - -	2 & 3 Vict. c. lxxxvii.
Saint Helen's - - -	4 & 5 Vict. c. lxxxii.
Staffordshire Potteries -	4 & 5 Vict. c. lxxxi.
Tavistock - - - -	3 Vict. c. lxviii.
Totnes - - - -	4 & 5 Vict. c. lxxx.
Warrington - - -	2 & 3 Vict. c. xci.
Westminster - - -	6 & 7 Will. 4, c. cxxxvii.
Wigan - - - -	4 & 5 Vict. c. lxxviii.
Wirksworth - - -	2 & 3 Vict. c. cii.

[illegible]

[illegible]	[illegible]	Persons to whom the next Appointment is to belong.
[illegible]	[illegible] Court to be [illegible]	Lord of the Manor of Ashton-under-Lyne.
[illegible]	[illegible] Court [illegible] at Bir[illegible]	Lord of the Manor of Birmingham.
[illegible]	[illegible] Court to be [illegible]	Lord of the Manor and Seven Hundreds of Cirencester.
[illegible]	[illegible] Court to [illegible] Kidder[illegible]	Lord of the Manor of the Borough of Kidderminster.
[illegible]	[illegible] Court to [illegible] at [illegible]	Lord of the Manor of Old Swinford or Ambiscout, to whom, on the Day before the passing of this Act, the next Turn belongs to appoint the Clerk or Beadle of the Court of Requests for the Parish of Old Swinford.
[illegible]	High Bailiff of the Court to be holden at Watford.	Lord of the Hundred of Cashio.
Sheffield	Judge of the Court to be holden at Sheffield. Clerk of the Court to be holden at Sheffield.	Lord of the Manor of Sheffield. Lord of the Manor of Ecclesall.
Stockport	Clerk of the Court to be holden at Stockport.	Lord of the Manor and Barony of Stockport.

SCHEDULE (D.)

	AMOUNT OF DEMAND.											
	Not exceeding 20s.		Exceeding 20s. and not exceeding 40s.		Exceeding 40s. and not exceeding £5.		Exceeding £5, and not exceeding £10.		Exceeding £10. Founded on Contract.		Exceeding £10. Founded on Tort.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
JUDGE'S FEES.												
Every Summons - - - - -	0	3	0	6	1	0	2	0	3	0	3	0
Every Hearing without a Jury -	1	0	1	6	2	6	7	6	10	0	15	0
Every Hearing or Trial with a Jury	2	0	3	0	5	0	10	0	15	0	20	0
Every Order or Judgment or Application for an Order - - -	0	3	0	6	1	0	2	0	3	0	3	0
CLERK'S FEES.												
Entering every Plaint and issuing the Summons thereon - -	0	3	0	6	1	0	2	0	3	0	3	6
Every Subpœna, when required -	0	3	0	6	0	9	1	0	1	6	1	6
Every Hearing, Trial, or Nonsuit without a Jury - - - - -	0	4	0	6	1	0	1	6	2	0	3	6
Adjournment of any Cause - -	0	3	0	4	0	6	1	0	2	0	2	0
Entering and giving Notice of Special Defence - - - - -	0	3	0	6	1	0	1	6	2	0	2	0
Swearing every Witness for Plaintiff or Defendant - - - - -	0	2	0	2	0	3	0	4	0	6	1	0
Entering and drawing up every Judgment and Order, and Copy thereof	0	3	0	6	1	0	1	6	2	6	3	0
Payment of Money in or out of Court, whether or not by Instalments at different Times, including Notice thereof, and taking Receipt - - - - - -	0	2	0	4	0	6	—		—		—	
Paying Money into Court, and entering same in Books, and Notice thereof, or of Sum in full satisfaction having been paid into Court, each Instalment or Payment -	—		—		—		0	6	0	8	1	0
Payment of Money out of Court, and taking Receipt, exclusive of Stamp	—		—		—		0	9	1	0	1	6
Every Search in the Books - -	0	2	0	2	0	4	0	6	1	0	1	0
Issuing every Warrant, Attachment, or Execution - - -	0	6	0	6	1	0	1	6	2	6	3	0
Supersedeas of Execution, or Certificate of Payment, or Withdrawal of Cause - - - -	0	3	0	6	0	6	1	0	1	6	2	0
Warrant of Commitment for an Insult or Misbehaviour in Court -	1	0	1	0	1	0	1	0	1	0	1	0
Entering and giving Notice of Jury being required - - - - -	0	6	0	9	1	0	1	6	2	0	2	6
Issuing Summons for Jury - -	0	6	0	9	1	0	1	6	2	0	2	6
Swearing Jury - - - - -	0	6	0	8	0	10	1	0	1	6	1	6
Every Hearing, Trial, or Nonsuit with a Jury - - - - -	1	0	1	6	2	0	3	0	5	0	7	6
Taking Recognizance or Security for Costs - - - - - -	—		—		—		2	0	2	6	3	0
Inquiring into Sufficiency of Sureties proposed, and taking Bond on Removal of Plaint, or Grant of New Trial, or other Occasion -	2	6	2	6	2	6	2	6	2	6	2	6
Taxing Costs - - - - - -	—		—		—		1	0	2	0	3	0

Where the Plaintiff recovers less than his Claim so as to reduce the Scale of Costs, the Plaintiff to pay the Difference.

SCHEDULE (D.)—*continued.*

HIGH BAILIFF'S FEES.	AMOUNT OF DEMAND. Not exceeding 20s.		Exceeding 20s. and not exceeding 40s.		Exceeding 40s and not exceeding £5.		Exceeding £5, and not exceeding £10.		Exceeding £10. Founded on Contract.		Exceeding £10. Founded on Tort.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Calling every Cause - - - -	0	2	0	3	0	4	0	6	1	0	1	6
Affidavit of Service of Summons, out of the Jurisdiction - -	0	2	0	3	0	6	1	0	1	6	2	0
Serving every Summons, Order or Subpœna within One Mile of Court House - - - - -	0	3	0	4	0	6	0	10	1	0	1	6
If above One Mile, then extra for every other Mile - - - -	0	2	0	2	0	3	0	4	0	4	—	
Execution of every Warrant, Precept, or Attachment against the Goods or Body within One Mile of the Court House - - -	1	6	2	6	3	6	4	0	5	0	7	0
If above One Mile, then extra for every other Mile - - -	0	3	0	3	0	4	0	6	0	6	0	6
If Two Officers be necessary in the Judgment of the Court, then extra, within One Mile of the Court House - - - - - -	1	0	1	6	2	0	2	0	2	6	3	0
If above One Mile, then extra for every other Mile - - -	0	3	0	3	0	4	0	6	0	6	0	6
Keeping Possession of Goods till Sale, per Day, not exceeding Five Days - - - - - -	1	0	1	6	2	0	2	0	2	6	3	0
Carrying every Delinquent to Prison, including all Expences and Assistants, per Mile - - -	1	0	1	0	1	0	1	0	1	0	1	0
Issuing Warrant to Clerk of another Court - - - - - - -	1	0	1	6	2	0	2	6	3	0	3	6

N.B.—The several Fees payable on Proceedings in Replevin to be regulated on the same Scale by the Amount Distrained for, and on Proceedings for the Recovery of Tenements by the Yearly Rent or Value of the Tenement sought to be Recovered.

CONTENTS

OF THE

RULES OF COURT.

RULE

1. Plaint. p. 203.
2. Particulars of demand. p. 203.
3. Note to be given to the party entering a plaint. p. 203.
4. Summons. p. 204.
5. One copy of particulars to be annexed to it. p. 204.
6. Service of summons, when. p. 204.
7. ——————, how, p. 204.
8. ——————, how, when the defendant is serving on board ship or in barracks. p. 204.
9. ——————, how, where the defendant is working in a mine, &c. p. 204.
10. ——————, how, where the defendant prevents regular service. p. 204.
11. ——————, how proved. p. 204.
12. Summons, how, to save the statute of limitations. p. 204.
13. Indorsement on copy of summons after service. p. 204.
14. These rules as to service, (except 11) applicable to judgments, orders, notices, &c. p. 205.
15. Payment of money into court, when. p. 205.
16. Proceedings thereon. p. 205.
17. Set-off, notice thereof. p. 205.
18. Clerk to give notice thereof to plaintiff. p. 205.
19. Notice of other defences, infancy, coverture, statute of limitations, bankruptcy, discharge or insolvent. p. 205.
20. Demand of jury, how and when. p. 206.
21. Notice of application for new trial, or setting aside proceedings. p. 206.
22. Notice to clerk to retain money paid into court, in what cases. p. 206.
23. When order for payment by instalments, instalment when and how to be paid. p. 206.
24. Plaint in replevin, where to be entered. p. 206.
25. Particulars of goods, &c. taken. p. 206.
26. Actions of replevin, how tried. p. 206.

RULE

27. Execution only against party to the action, unless upon plaint and summons on the judgment. p. 206.
28. When judgment for or against a person who dies, his executor, &c. may sue or be sued on the judgment. p. 206.
29. Judgment against executors, &c. in ordinary cases. p. 207.
30. The like, upon plea of *plene administravit*. p. 207.
31. Judgment for defendant on *plene administravit*. p. 207.
32. Proceedings upon judgment of assets *quando acciderint*. p. 207.
33. Proceedings against executors, &c. on a *devastavit*. p. 207.
34. Judgment against executors, &c. on a denial of their being so, or on a defence arising since the death. p. 207.
35. What costs of witnesses allowed. p. 207.
36. Costs to be taxed by clerk. p. 208.
37. Warrant of execution or commitment, when to be executed. p. 208.
38. Summons for commitment, when to be served. p. 208.
39. Interpleader summons, and proceedings. p. 208.
40. Clerk to keep books. p. 208.
41. Entries in such books to be numbered. p. 208.
42. Clerk's office. p. 208.
43. Matters required to be done by clerk, may be done by his assistants. p. 208.
44. Office hours. p. 208.
45. High bailiff to make return of what done under an execution or commitment. p. 208.
46. High bailiff to deliver a list of summonses served. p. 209.
47. High bailiff to make return of execution or commitment issued by another court. p. 209.
48. Bailiff to pay money levied by him to clerk. p. 209.
49. How, when it is levied under process from another court. p. 209.
50. Summons, &c. not to be served on Sunday, Christmas-day or Good Friday. Such days when included in computation of time. p. 209.
51. Provisions as to forms, in cases where there are none in the schedule. p. 209.
52 As to the construction of these rules. p. 209.

RULES OF PRACTICE

FOR THE

COUNTY COURTS IN ENGLAND.

WHEREAS by an act made and passed in the session of parliament held in the ninth and tenth years of the reign of Her present Majesty, intituled "an act for the more easy recovery of small debts and demands in England," it is amongst other things enacted, that five of the judges of the superior courts of common law at Westminster, including the lord chief justice of the court of Queen's Bench, the lord chief justice of the court of common pleas, and the lord chief baron of the court of exchequer, or one of the said chiefs, at the least, shall have power to make and issue all the general rules for regulating the practice and proceedings of the county courts holden under the said act; and also to frame forms for every proceeding in the said courts for which they shall think it necessary that a form be provided; and also for keeping all books, entries and accounts, to be kept by the clerks of the said courts, and from time to time to alter any such rule or form, and that the rules so made, and the forms so framed, shall be observed and used in all the courts holden under the said act.

In pursuance of such power, therefore, it is hereby ordered that the following be the

Rules of Practice for the County Courts in England.

1. Every plaint must be entered upon application at the office of the clerk, pursuant to the form in the plaint book in the schedule to these rules annexed.

2. On entering the plaint, the plaintiff shall, if the sum sought to be recovered shall exceed 5*l.*, deliver at the office of the clerk, as many copies of a statement of the particulars of his demand or cause of action, as there are defendants, with an additional copy to file: provided always, that in all cases, the judge, in his discretion, and on such terms as he may think fit, may adjourn the cause at the hearing, for the delivery of a statement of particulars or further particulars.

3. At the time of entering the plaint, the clerk of the court shall give to the plaintiff a note according to the form in the

said schedule; and no money shall be paid out of court to the plaintiff unless on production of such note, or by order of the judge.

4. The summons to appear to a plaint shall be issued according to the forms in the schedule, and shall be dated as of the day on which the plaint was entered.

5. The clerk shall annex to each summons to be served, one of the copies of the statement of the particulars of the plaintiff's demand furnished to him pursuant to rule 2, sealed with the seal of the court.

6. Every such summons must be served ten clear days before the holding of the court at which it shall be returnable.

7. The service of any summons to appear to a plaint, must be either personal, or by delivering the same to some person at the place of abode or the place of business of the defendant.

8. Where a defendant shall be living or serving on board of any ship or vessel, or be residing or quartered in any barracks, and serving Her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons to the senior officer on board, or to the person who may at the time have charge of such ship or vessel, or to the adjutant of the corps, or any officer or serjeant of the company to which such soldier or marine shall belong or shall be attached.

9. Where a defendant shall be working in any mine or other works carried on under ground, and the bailiff shall not be able to serve him with a summons, as hereinbefore directed, it shall be sufficient service to deliver the summons to the engine-man, banks-man, or other person in charge of such mine or works.

10. Where any defendant shall, by keeping his house or place of abode closed, or by violence or threats, prevent any bailiff from serving the summons as hereinbefore directed, and such summons shall have been affixed on the door of such house or place of abode, or otherwise served as nearly as may be according to the mode hereinbefore directed, such service shall be deemed good service.

11. Provided that in all cases where a summons to appear to a plaint shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the judge, that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day.

12. Where any such summons has not been served as herein before directed, the judge may, in his discretion, in order to save the statute of limitations, direct another summons or successive summonses to be issued, bearing the same date and number as the first summons.

13. The bailiff who serves a summons to appear to a plaint, shall endorse on a copy of such summons the time and manner

of the service thereof, and shall produce such copy, so endorsed, at the court at which such summons shall be returnable, and such copy shall be filed by the clerk of the court.

14. The above rules, except rule 11, as to the mode of service of summonses to appear to a plaint, shall apply to the services of all summonses, judgments, orders, notices, and process, whatsoever, issuing under the authority of the said act, except where otherwise directed by the said act or any rule made under the authority thereof.

15. Where the defendant pays money into court, the same must be paid into court five clear days before the return of the summons.

16. If the plaintiff elect to accept, in full satisfaction of the debt or damages claimed, such part thereof as shall have been paid into court by the defendant, and shall give a written notice to that effect to the clerk of the court and a like notice to the defendant by serving the same on such defendant personally or leaving it at his place of abode or business, three clear days before the return of the summons, the action shall be discontinued, and the plaintiff shall not be liable to any further costs. But in default of giving such notice, the suit will proceed; and if the plaintiff do not appear at the hearing, he shall be liable to pay to the defendant such costs as he may incur in appearing to try the cause, or such other sum of money as the judge may order.

17. Where a defendant desires to set off any debt or demand alleged to be due to him by the plaintiff, he must give notice thereof in writing to the clerk of the court, and deliver to such clerk two copies of a statement of the particulars of such set-off, five clear days before the return of the summons.

18. The clerk of the court shall give to the plaintiff a notice of such set-off, according to the form in the schedule, in manner directed by the act, together with one of the copies of such particulars of set-off, sealed with the seal of the court: provided always, that where such notice shall not have been given, the judge in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge shall think proper.

19. Where a defendant intends to rely on the special defence of infancy, coverture, the statute of limitations, or his discharge under any statute relating to bankrupts, or any act for the relief of insolvent debtors, he shall give notice thereof in writing to the clerk of the court, five clear days before the day on which the summons is returnable: provided always, that where such notice shall not have been given, the judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge may think proper.

20. Every notice of a demand of a jury, where the debt or demand claimed shall exceed 5*l.*, must be made in writing to the clerk of the court, two clear days before the return of the summons.

21. No application for a new trial, or to set aside any proceedings, shall be made subsequently to the court at which such trial or other proceeding shall have been had, unless the party making such application shall have given a written notice thereof to the clerk of the court at his office, and to the other party, by serving the same personally on such party, or leaving the same at his usual place of abode or business, seven clear days before the time of holding the court at which such application shall be made.

22. Where any money is paid into court under any execution or order of the court, if the clerk receive notice from any party of his intention to apply to the court to set aside the execution or order under which such money is paid into court, the clerk shall retain the same, until after such application has been determined, or until the judge shall otherwise order.

23. When any order is made for the payment of any debt, damages, costs, or other sum of money by instalments, such instalments shall be payable at the office of the clerk of the court, at such periods as the court shall order; and if no order be made, then the first shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at like periods of a calendar month from the day of the previous instalment becoming due.

24. Where any cattle, goods, or chattels taken as a distress for rent in arrear, or damage feasant, shall have been replevied by the sheriff, the party at whose instance such replevin shall have been made, shall enter his plaint in the court held under the authority of this act, for the district within which such distress may have been made.

25. On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains.

26. All actions of replevin in cases of distress for rent in arrear, or damage feasant, shall be tried in a summary way as other actions in the courts held under the authority of this act, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms in the rules, or to the like effect.

27. Execution on a judgment is not to issue by or against any person not a party to such suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same as in ordinary cases.

28. Where a judgment has been given for or against a person deceased, his executors or administrators may in the same manner sue or be sued upon the judgment.

29. The ordinary judgment against executors or administrators shall be, to pay the debt or damages and costs to be levied out of the goods of the deceased in their hands, and as to the costs, if there are no such goods, then to be levied out of their own goods.

30. Where the defence is, that executors or administrators have fully administered, if it be adjudged by the court that they have assets not administered, then a like judgment shall go as in the above case, but only as to the goods of the deceased, to the amount proved to be in their hands, and of assets *quando acciderint*, as to the residue: the judgment as to costs shall be, that they be levied *de bonis testatoris, si, &c., et si non, de bonis propriis.*

31. If the sole defence by executors or administrators be, that they have fully administered, and the judgment of the court is for the defendants, it shall be, that the amount found to be due be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the judge.

32. Where judgment has been given against executors and administrators, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may at any time proceed by plaint against them, suggesting that assets have come to their hands, and the court shall proceed and give judgment thereon, if for the plaintiff, as in rule 29, and if for the defendants, they shall be entitled to their costs.

33. Where judgment has been given that the debt (or damages) and costs be levied *de bonis testatoris*, and the plaintiff complains that the defendants have been guilty of a *devastavit*, inasmuch as no goods of the deceased are forthcoming to satisfy the execution issued, then a summons may be taken out in the form given in the schedule, or to the like effect, and thereupon, as in ordinary cases, the court shall proceed to the hearing and judgment, and if judgment be given against such executors or administrators, then it shall be that they pay the debt, or damage and costs, to be levied *de bonis testatoris, si, &c., et si non, de bonis proprits.*

34. Where in an action against executors or administrators, the defence is, that they are not executors or administrators, or it is founded on some matter or thing arising since the death of the testator or intestate, *ex. gr.* a release to the defendants, if the judgment of the court be against them, it shall be, that, the debt, or damages, and costs be levied, and paid *de bonis testatoris, si, &c., et si non, de bonis propriis.*

35. The judge shall in each case order what number of witnesses shall be allowed on taxation of costs, the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered, but in no case to exceed such scale.

36. All costs shall be taxed by the clerk of the court.

37. No warrant of execution or commitment shall be executed after the expiration of two calendar months from the date thereof.

38. Every summons for a party to appear to be examined upon oath, pursuant to the 98th section of the said act, shall be served not less than three clear days before the day on which the party is required to appear to such summons: provided always, that service of such summons at any time before the time appointed for the appearance of such party, may be deemed by the judge to be good service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the court.

39. Where any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under the authority of the said act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and manner as hereinbefore directed for a summons to appear to a plaint, and the claimant shall be deemed the plaintiff, and the execution creditor the defendant; and the claimant shall, five clear days before the day on which the summonses are returnable, deliver to the said officer, or leave at the office of the clerk of the court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or, in case of a claim for rent, of the amount thereof, and for what period the same is claimed to be due.

40. The clerk of every court shall keep the several books, and in the form in the schedule.

41. Every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which it refers.

42. The clerk of every court shall have an office at each place where the court of which he is clerk is held.

43. All matters or things required to be done by the clerk of the court may be done by the clerk of the court, or by the assistant clerk or clerks provided by him.

44. The office of the clerk shall be open daily, and the office hours shall be from 10 o'clock in the morning until 4 in the afternoon.

45. At every court, or at such other times as the judge shall require, the high bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done since his last return under every process of execution or commitment, which he shall have been required to execute.

46. Eight days before the day of the holding of the court, the high bailiff shall deliver to the clerk of the court a list of all summonses to appear which shall have been served, and the clerk shall forthwith stick up such list in his office.

47. Every high bailiff required to execute any warrant of execution or commitment issuing out of any other court, shall make a return to such last mentioned court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof.

48. Every bailiff levying or receiving any money by virtue of any process issuing out of the court of which he is bailiff, shall, within three days after the receipt thereof, pay over the same to the clerk of such court.

49. If any high bailiff shall have levied or received any money under any process issuing out of any other court, he shall, within three days from the receipt thereof, pay over such money, retaining the fees for execution thereof, to the high bailiff of such last mentioned court.

50. No summons, notice, order, or other process shall be served on Sunday, Christmas-day, or Good Friday; but such days shall be counted in the computation of the time required by these rules, unless any of such days shall be the last day of such time, in which case it shall be excluded from such computation.

51. In case of proceedings not provided for by the forms in the schedule, the clerk of the court shall issue the necessary process, using, where practicable, the forms prescribed in the schedule as guides in framing the same.

52. Wherever the singular number is used in these rules in reference to persons or things, it shall be understood, when necessary to give full effect to the rule, to mean several persons or things; and every word importing the masculine gender shall in like manner, when necessary, be understood to include the feminine gender.

FRED. POLLOCK.
WM. WIGHTMAN.
C. CRESSWELL.
W. ERLE.
E. V. WILLIAMS.

DISTRICTS.

The following are the names of the "Court towns," or towns in which the courts under this Act shall be holden, in the different counties,—and of the parishes within each district, as specified in the *Gazette* of the 10th March, 1847.

☞ The Towns are printed in Roman Small Capitals, and the Parishes in the ordinary type.

BEDFORDSHIRE.

AMPTHILL, Ampthill.—BEDFORD, Bedford.—BIGGLESWADE, Biggleswade.—LEIGHTON BUZZARD, Leighton Buzzard, Woburn.—LUTON, Luton.

BERKSHIRE.

ABINGDON, Abingdon, including the parish or chapelry of Wootton and parish of Besselsleigh, but excepting all the rest of the sub-district of Cumner (see *Oxford.*)—FARRINGDON, Farringdon. — HUNGERFORD, Hungerford. — NEWBURY, Newbury, Kingsclere. — READING, Reading, Wokingham, Bradfield. Henley, except the sub-district of Watlington and parishes of Fawley, Hambleden, and Medmenham (see *Wallingford* and *Great Marlow.*)—WALLINGFORD, Wallingford. The sub-district of Watlington, in Henley, consisting of the parishes of Watlington, Brightwell Baldwin, Britwell Salome, Bix, Cuxham, Pishill, Pirton, Swincombe, and chapelry of Britwell Prior.—WANTAGE, Wantage.—WINDSOR, Windsor, except the sub-district of Egham (see *Chertsey*). Eton, except the sub-district of Iver (see *Uxbridge*). Easthampstead. Cookham, except the parishes of Bisham and Hurley (see *High Wycombe*).

BUCKINGHAMSHIRE.

AYLESBURY, Aylesbury, except the parishes of Choulesbury and Hawridge, and hamlet of Saint Leonard's (see *Chesham*). The parishes of Wendover, Ellesborough, Great and Little Kimble, Stoke Mandeville, and Illmire. The sub-district of Tring in Berkhampstead, consisting of the parishes of Tring, Wigginton, Marsworth, Puttenham, Aldbury, and Pitstone.—BUCKINGHAM, Buckingham, Winslow.—CHESHAM, Amersham, except the sub-district of Beaconsfield (see *Great Marlow*). The chapelries of Bovindon and Flaunden, in the parish of Hemel Hempstead. The parishes of Choules-

bury and Hawridge, and the hamlet of St. Leonard's. Berkhampstead, except the sub-district of Tring (see *Aylesbury*). —HIGH WYCOMBE. The sub-district of Beaconsfield, in Amersham, consisting of the parishes of Beaconsfield and Penn, and the hamlet of Seer Green, in the parish of Farnham Royal. Wycombe, except the parishes of Wendover, Ellesborough, Great and Little Kimble, Stoke Mandeville, and Illmire (see *Aylesbury* and *Thame*). The parishes of Bisham and Hurley. The parishes of Fawley, Hambleden, and Medmenham.—NEWPORT PAGNELL. Newport Pagnell. The parish of Calverton, Stoney Stratford, and Wolverton.

CAMBRIDGESHIRE.

CAMBRIDGE, Cambridge, Caxton and Arrington, Chesterton.—ELY, Ely.—MARCH, North Whichford.—NEWMARKET, Newmarket, except the parishes of Soham, Fordham, Isleham, and Wicken (see *Soham*).—SOHAM. The parishes of Soham, Fordham, Isleham, and Wicken.—WISBEACH, Wisbeach, except the parishes of Clenchwarton, Terrington St. Clement, Terrington St. John, Tilney All Saints, Tilney St. Lawrence, Tilney-cum-Islington (see *King's Lynn*).

CHESHIRE.

ALTRINCHAM, Altrincham, except the sub-districts of Knutsford and Winslow and parish of Lymm (see *Knutsford* and *Warrington*).—BIRKENHEAD, Wirrall.—CHESTER. Great Boughton.—CONGLETON, Congleton.—HYDE. The sub-districts of Denton and Haughton, Newton and Godley, and Mottram, in Ashton and Oldham, consisting of the townships of Denton and Haughton in the parish of Manchester, and the townships of Godley, Hattersley, Hollingworth, Mottram, Newton, and Tintwistle, except the hamlet of Micklehurst, in the parish of Mottram in Longdendale. The sub-district of Hyde, in Stockport, consisting of the chapelry of Hyde and the townships of Bredbury and Werneth, in the parish of Stockport.—KNUTSFORD. The sub-districts of Knutsford and Wilmslow, in Altrincham, consisting of the parishes of Mobberley, Knutsford, Northen; the townships of Handford, in the parish of Cheadle; Peover Inferior; Pickmere; Plumbley and Tabley Inferior in the parish of Great Budworth; Marthall with Little Warford, Mere, Peover Superior, Rostherne, Tabley Superior, and Tatton, in the parish of Rostherne; Bollinfee, Fulshaw, and Pownall-Fee, in the parish of Wilmslow.—MACCLESFIELD, Macclesfield.—NANTWICH, Nantwich, except the townships of Audlem, Bickley, Buerton, Dodcott with Wilkesley, Hampton, Macefen, Marbury with Quoisley, Norbury, Tushingham with Grindley

and Wirswall (see *Whitchurch*).—NORTHWICH, Northwich. The township of Great Budworth, in Runcorn.—RUNCORN, Runcorn, except the sub-districts of Grappenhall and Great Budworth (see *Warrington* and *Northwich*).—STOCKPORT, Stockport, except the sub-district of Hyde (see *Hyde*).

CORNWALL.

BODMIN, Bodmin. — CAMELFORD, Camelford. — FALMOUTH, Falmouth.— HELSTON, Helston.—LAUNCESTON, Launceston.—LISKEARD, Liskeard.—PENZANCE, Penzance, Scilly Islands. — REDRUTH, Redruth. — ST. AUSTELL, St. Austell. — ST. COLUMB MAJOR, St. Columb. — TRURO, Truro.

CUMBERLAND.

ALSTON, Alston. The parishes of Kirkhaugh and Knaresdale.—CARLISLE, Brampton, Carlisle, Longtown.—COCKERMOUTH, Cockermouth, except the sub-district of Keswick and chapelries of Newlands and Buttermere (see *Keswick*).—KESWICK. The sub-district of Keswick, in Cockermouth, consisting of the parish of Bassenthwaite; the townships of Borrowdale, Keswick, Underskiddaw, St. John's Castlerigg, and Wythburn, in the parish of Crosthwaite; the chapelry of Wythop, in the parish of Lamplugh; the chapelry of Embleton, in the parish of Brigham; and the township of Bewaldeth, in the parish of Torpenhow. The chapelries of Newlands, Buttermere, and Threlkeld.—PENRITH. West Ward, Penrith, except the chapelry of Threlkeld (see *Keswick*).—WHITEHAVEN, Bootle, Whitehaven.—WIGTON, Wigton.

DERBYSHIRE.

ALFRETON. The sub-district of Alfreton, in Belper, consisting of the parish of Alfreton. The sub-district of Ripley, in Belper, except the township of Heage, consisting of the parishes of South Wingfield, Pentrich, including the chapelry of Ripley, and the parish or township of Crich (see *Belper*). The sub-district of Ashover, in Chesterfield, except the townships of Claylane and Woodthorpe, consisting of the parishes, townships, and hamlets of Ashover, Brackenfield, Higham, Morton, Pilsley, Shirland, Stretton, and Wessington (see *Chesterfield*). The sub-district of Blackwell in Mansfield, consisting of the parishes of Blackwell, Tibshelf, Pinxton, and South Normanton. The parishes of Annesley, with Felley, Kirkby in Ashfield, and Selston, the hamlet of Codnor and precinct of Codnor-park.—ASHBORNE, Ashborne, except the sub-district of Brassington (see *Wirksworth*).—BAKEWELL, Bakewell, including the townships of Birchover and Gratton,

but excepting all the rest of the sub-district of Matlock (see *Wirksworth*).—BELPER, Belper, including the townships of Duffield, Hazlewood, Heage, Shottle, Turnditch, and Windley, but excepting all the rest of the sub-districts of Alfreton, Duffield, Ripley, and Wirksworth (see *Alfreton*, *Derby*, and *Wirksworth*). The townships of Heanor and Shipley, and hamlet of Loscoe. The parish of Ilkeston.—CHAPEL-EN-LE-FRITH, Chapel-en-le-Frith. The hamlets of Beard, Ollersett, Whittle, and Thornsett, and chapelry of Disley.—CHESTERFIELD, Chesterfield, including the townships of Woodthorpe and Claylane, but excepting all the rest of the sub-district of Ashover (see *Alfreton*).—DERBY, Derby, Shardlow, except the sub-district of Castle Donington, and parish of Breedon, and the parishes of Attenborough, Bramcote, Stapleford, (see *Nottingham* and *Leughborough*). The sub-district of Repton, in Burton, consisting of the parishes of Dalbury with Lees, Etwall, Ingleby, Mickleover, with the chapelry of Findern, Newton Solney, Radbourne, Repton, Trusley, Willington, the chapelry of Twyford and Stenson, and the hamlet of Ash. The sub-district of Duffield in Belper, except the townships of Duffield, Hazlewood, Turnditch, and Windley, consisting of the parishes of Allestree, Kirklangley, Kedleston, Markeaton, Quarndon, and the townships of Muggington, Ravensdale-park, and Weston-under-Wood (see *Belper*).—GLOSSOP, Hayfield and Glossop, except the chapelry of Disley and hamlets of Beard, Ollersett, Whittle, and Thornsett (see *Chapel-en-le-Frith*).—WIRKSWORTH. The sub-district of Brassington in Ashborne, consisting of the parishes of Bonsall, Carsington, Hognaston, and the townships, hamlets, and chapelries of Ballidon, Brassington, Callow, Hopton, Ible, Kirk Ireton, and Middleton by Wirksworth. The sub-district of Matlock, in Bakewell, except the townships of Birchover and Gratton, consisting of the parishes of Darley, Matlock, and the townships and chapelries of Aldwark, Cromford, Elton, Tansley, Wensley, and Snitterton, and Winster (see *Bakewell*). The sub-district of Wirksworth in Belper, except the township of Shottle, consisting of the townships, hamlets, and chapelries of Alderwasley, Ashley Hay, Dethwick Lea, Holloway, Ideridgehay and Allton, Ireton Wood, and Wirksworth (see *Belper*.)

DEVONSHIRE.

AXMINSTER, Axminster. The parishes of Catherston Lewston, and Wootton Fitzpaine.—BARNSTAPLE, Barnstaple, except the parishes of Horwood, Instow, and West Leigh (see *Bideford*).—BIDEFORD, Bideford. The parishes of Horwood, Instow, and West Leigh.—CREDITON, Crediton.—EXETER, Exeter, St. Thomas.—HOLSWORTHY, Holsworthy,

Stratton.—HONITON, Honiton.—KINGSBRIDGE, Kingsbridge.—NEWTON ABBOTT, Newton Abbott.—OAKHAMPTON, Oakhampton.—PLYMOUTH, Plymouth, Plympton St. Mary, East Stonehouse, Stoke Damerel, St. Germains, including the Hamoaze and Catwater, and so much of the Sound as is within the body of any county.—SOUTH MOLTON, South Molton, except the parish of Rackenford (see *Tiverton*).—TAVISTOCK, Tavistock.—TIVERTON, Tiverton and Dulverton. The parish of Rackenford.—TORRINGTON, Torrington.—TOTNES, Totnes.

DORSETSHIRE.

BLANDFORD, Blandford, except the chapelry of Farringdon (see *Shaftesbury*.) — BRIDPORT, except the parishes of Catherston Lewston, and Wootton Fitzpaine (see *Axminster*). Beaminster, except the sub-district of Misterton (see *Crewkerne*.—DORCHESTER, Dorchester and Cerne. — POOLE, Poole, except the parish of Canford Magna (see *Wimborne Minster*). — SHAFTESBURY, Mere, Tisbury, Shaftesbury, Sturminster. The chapelry of Farringdon in the parish of Iverne Courtnay.—WAREHAM, Wareham and Purbeck.—WEYMOUTH, Weymouth.—WIMBORNE MINSTER, Wimborne and Cranborne. The parish of Canford Magna.

DURHAM.

BARNARD CASTLE, Teesdale.—BISHOPS AUCKLAND, Auckland.—DARLINGTON, Darlington.—DURHAM, Chester-le-Street. Durham and Lanchester, except the townships of Benfieldside, Billingside, Butsfield, Conside and Knitsley, Greencroft, Healyfield, Ivestone, Medomsley, and the chapelries of Ebchester, Muggleswick, and Cold Rowley, in the parish of Lanchester (see *Shotley Bridge*). Houghton. Easington, except the parishes of Castle Eden and Monk Hesleton, and the township of Shotton (see *Hartlepool*).—GATESHEAD, Gateshead.—HARTLEPOOL. The sub-district of Hartlepool, except the parish of Billingham, in Stockton and Sedgefield, consisting of the parishes of Hartlepool, Greatham, Hart, Stranton, and Elwick Hall (see *Stockton*). The parishes of Castle Eden and Monk Hesleton, and township of Shotton.—SHOTLEY BRIDGE, parish of Shotley. The chapelry of Whittonstall, in the parish of Bywell St. Peter's. The townships of Benfieldside, Billingside, Butsfield, Conside and Knitsley, Greencroft, Healyfield, Ivestone, Medomsley, and the chapelries of Ebchester, Muggleswick, and Cold Rowley, in the parish of Lanchester. The parish of Edmondbyers, including the chapelries of Huntonsworth and Ruffside.—SOUTH SHIELDS, South Shields.—STOCKTON-

ON-TEES, Stockton and Sedgefield, including the parish of Billingham, but excepting all the rest of the sub-district of Hartlepool (see *Hartlepool*).—SUNDERLAND, Sunderland.—WOLSINGHAM, Weardale, except the parish of Edmundbyers, including the chapelries of Huntonsworth and Ruffside (see *Shotley Bridge*).

ESSEX.

BRAINTREE, Braintree.—BRENTWOOD, Ongar. Billericay, except the parishes of Bowersgifford, North and South Benfleet, and Thundersley (see *Rochford*). CHELMSFORD, Chelmsford, Witham.—COLCHESTER, Colchester, Lexden, and Winstree. Tendring, including the parish of Manningtree, but excepting the sub-districts of Harwich and Thorpe, and all the rest of the sub-district of Manningtree (see *Harwich*).—DUNMOW, Dunmow.—HALSTEAD, Halstead, except the parishes of Ridgewell and Stambourne (see *Haverhill*).—HARWICH, the sub-districts of Harwich, Thorpe and Manningtree, except the parish of Manningtree, in Tendring, together consisting of the parishes of St. Nicholas Harwich, Dover Court, Beaumont, Bradfield, Frinton, Great and Little Holland, Kirkley, Mistley, Great Oakley, Little Oakley, Ramsey, Tendring, Walton, and Wix (see *Colchester*).—MALDON, Maldon.—ROCHFORD, Rochford. The parishes of Bowersgifford, North and South Benfleet, and Thundersley.—ROMFORD, Romford. Orsett, except the parishes of West Thurrock, Gray's Thurrock, Little Thurrock, Chadwell, West Tilbury, East Tilbury, and Muckinge (see *Gravesend*). SAFFRON WALDEN, Linton, Saffron Walden.—WALTHAM, Epping. The sub-districts of Cheshunt and Waltham Abbey, in Edmonton, consisting of the parishes of Cheshunt and Waltham Abbey.

GLOUCESTERSHIRE.

BRISTOL, Bristol, Clifton, Bedminster. Keynsham, except the sub-district of Newton (see *Bath*).—CHELTENHAM, Cheltenham.—CHIPPING-SODBURY, Chipping-Sodbury.—CIRENCESTER, Cirencester.—DURSLEY, Dursley. The sub-district of Berkeley, in Thornbury, consisting of the parishes of Berkeley, Charfield Hill, and Tortworth. The parish of Cromhall. The parishes of Kingscote, Newington Bagpath, and Ozleworth.—GLOUCESTER, Gloucester, Wheatenhurst. The sub-district of Huntley, in Westbury-on-Severn, except the parish of Westbury, consisting of the parishes of Bulley, Minsterworth, Huntley, Longhope, Blaisdon, and Churcham (see *Newenham*).—NEWENT, Newent.—NEWNHAM, Westbury-on-Severn, including the parish of Westbury, but ex-

[illegible]

[illegible] Weob-
[illegible] Bardis-
[illegible] the sub-district of
[illegible] Almeley.—LED-
[illegible] ster. The parishes
[illegible] and Weobley.—

[illegible]

[illegible]—BISHOPSTORT-
[illegible] Hertford, Ware. The
[illegible] Welwyn, consisting of
[illegible] two Saint Lawrence, and
[illegible]—ROYSTON, Royston
[illegible] St. Albans. Hatfield and
[illegible] of Welwyn (see *Hertford.*)
[illegible] district of King's Langley
[illegible]—WATFORD, Watford. Hen-
[illegible] and Willesden, and pa-
[illegible] and *Marylebone*). The

[illegible]DONSHIRE.

[illegible], St. Ives.—St. Neot's, St.
[illegible] of Shelton, Bun, Tilbrook, Great
[illegible] (see *Thrapston*).

Districts in which the Courts are hel

KENT.

ASHFORD, West Ashford, East Ashford, except the
of Aldington, Bonington, and Hurst (see *Hythe*).
LEY, Bromley.—CANTERBURY, Blean Bridge, Canter
DARTFORD, Dartford.—DEAL, Eastry.—DOVER, D
FAVERSHAM, Faversham.—FOLKESTONE, the tow
parish of Folkestone, the parishes of Cheriton, Ha
Paddleworth, Swingfield, and Acrise.—GRAVESEND, (
end. The sub-district of Northfleet, in North Aylesfor
sisting of the parishes of Chalk, Cobham, Denton, Ifield
deedown, Meopham, Northfleet, Nursted, and Shorne
parishes of Chalk, Gravesham, East Tilbury, and Mucki
Chadwell, West Thurrock, Gray's Thurrock, Little Th
Orsett.—GREENWICH, Lewisham, Greenwich, exc
much as lies west of the Croydon Railway (see *Lamb*
HYTHE, West Tilbury, Eltham, except the town and Paddleworth,
and parishes of Croydon, Hawkinge, parish of Foll
Rye, Elham, Hythe, and Acrise (see *Folkestone*). The parishes o
Hollingbourne, Bonington, Maidstone, Malling, Aldington.—MAID
Burham, Hurst, Ightham, Shipborne, and Seven Oaks). except the par
(see *Rochester*).—MARGATE, the
of Saint Peter, Medway, Hoo, Peter, Wood Ramsgate, the
chington, John the Baptist, Saint Peter, Wood Margate, the
and parishes of the vill of Wood, Ayles- Apostle, a
CHESTER, Medway, Hoo, Peter, Wood (see *Margate*). Thanet
Birchington, John the Baptist, Saint Peter, Wood Margate, the
Burham, Medway, Hoo, Peter, Wood Margate, the
ento district of St. John the Baptist, Saint Peter, Wood Margate, the
Romney, Wouldham, Hardip, Rainham, Margate, the
Hythe (see Romney, Hardip, Rainham, Margate, the
Lightham, Sittingbourne, and Upchurch, Margate, the
sub-district of Northfleet (see *Gravesend*). Margate, the
Hythe). Seven Oaks, Sevenoaks, Margate, the
Ley, Sittingbourne, and Upchurch, Margate, the
Hip, Sittingbourne, and Upchurch, Margate, the
DEN, Cranbrook, Tenterden, Margate, the
Cranbrook, Tenterden, Margate, the
Chiddingstone, Cowden, Seven Oaks, Margate, the
Penshurst, Tenterden, Margate, the
so much of the parishes of Margate, the
North of a line Margate, the
Bits of the parishes of Margate, the
toward and, along the said Margate, the
ing by St. Thomas's Margate, the
ing to Hastings Road, Margate, the
Pellet Gate, till it crosses the bound

cepting all the rest of the sub-district of Huntley (see *Gloucester*).—NORTHLEACH, Northleach.—STOW, Stow-in-the-Wold.—STROUD, Stroud.—TEWKESBURY, Tewkesbury.—THORNBURY, Thornbury, except the sub-district of Berkeley and parish of Cromhall (see *Dursley*).—WINCHCOMB, Winchcomb.

HAMPSHIRE.

ANDOVER, Andover, Whitchurch.—ALTON, Alton.—BASINGSTOKE, Basingstoke, Hartley Wintney.—BISHOP'S WALTHAM, Droxford.—CHRISTCHURCH, Christchurch.—FORDINGBRIDGE, Fordingbridge, Ringwood.—LYMINGTON, Lymington.—NEWPORT, Isle of Wight.—PETERSFIELD, Petersfield, Catherington.—PORTSMOUTH, Alverstoke, Fareham, Havant, Portsea.—ROMSEY, Romsey, Stockbridge.—SOUTHAMPTON, Southampton, South Stoneham, New Forest.—WINCHESTER, Alresford, Winchester, Hursley.

HEREFORDSHIRE.

BROMYARD, Bromyard.—HEREFORD, Hereford, Weobley, except the parishes of Almeley, Birley, Dilwyn, Eardisland, Stretford, Weobley (see *Kington* and *Leominster*),—KINGTON, Presteigne and Kington, except the sub-district of Presteigne (see *Presteigne*). The parish of Almeley.—LEDBURY, Ledbury.—LEOMINSTER, Leominster. The parishes of Birley, Dilwyn, Eardisland, Stretford, and Weobley.—ROSS, Ross.

HERTFORDSHIRE.

BARNET, Barnet.—The parish of Hendon.—BISHOP STORTFORD, Bishop Stortford.—HERTFORD, Hertford, Ware. The sub-district of Welwyn, in Hatfield and Welwyn, consisting of the parishes of Welwyn, Digswell, Ayot Saint Lawrence, and Ayot Saint Peter.—HITCHIN, Hitchin.—ROYSTON, Royston and Buntingford.—ST. ALBANS, St. Albans. Hatfield and Welwyn, except the sub-district of Welwyn (see *Hertford*.) Hemel Hempstead, except the sub-district of King's Langley (see *Chesham* and *Watford*).—WATFORD, Watford. Hendon, except the parishes of Hendon and Willesden, and precinct of Twyford Abbey (see *Barnet* and *Marylebone*). The parish of King's Langley.

HUNTINGDONSHIRE.

HUNTINGDON, Huntingdon, St. Ives.—ST. NEOT'S, St. Neot's, except the parishes of Shelton, Dean, Tilbrook, Great Catworth, and Long Stow (see *Thrapstons*).

KENT.

ASHFORD, West Ashford, East Ashford, except the parishes of Aldington, Bonington, and Hurst (see *Hythe*). BROMLEY, Bromley.—CANTERBURY, Blean Bridge, Canterbury.—DARTFORD, Dartford.—DEAL, Eastry.—DOVER, Dover.—FAVERSHAM, Faversham.—FOLKESTONE, the town and parish of Folkestone, the parishes of Cheriton, Hawkinge, Paddleworth, Swingfield, and Acrise.—GRAVESEND, Gravesend. The sub-district of Northfleet, in North Aylesford, consisting of the parishes of Chalk, Cobham, Denton, Ifield, Luddesdown, Meopham, Northfleet, Nursted, and Shorne. The parishes of West Thurrock, Gray's Thurrock, Little Thurrock, Chadwell, West Tilbury, East Tilbury, and Muckinge, in Orsett.—GREENWICH, Lewisham, Greenwich, except so much as lies west of the Croydon Railway (see *Lambeth*).—HYTHE, Elham, except the town and parish of Folkestone, and parishes of Cheriton, Hawkinge, Paddleworth, Swingfield, and Acrise (see *Folkestone*). The parishes of West Hythe, Hurst, Bonington, and Aldington.—MAIDSTONE, Hollingbourne, Maidstone. Malling, except the parishes of Burham, Ightham, Shipborne, Wouldham, and Wrotham (see *Rochester* and *Seven Oaks*).—MARGATE, the parishes of Saint John the Baptist, Saint Peter the Apostle, and Birchington, and the vill of Wood.—RAMSGATE, Thanet, except the parishes of St. John the Baptist, St. Peter the Apostle, and Birchington, and the vill of Wood (see *Margate*.)—ROCHESTER, Medway, Hoo. North Aylesford, except the sub-district of Northfleet (see *Gravesend*). The parishes of Burham, Wouldham, Hartlip, Rainham, and Upchurch.—ROMNEY, Romney Marsh, except the parish of West Hythe (see *Hythe*).—SEVEN OAKS, Seven Oaks, except the sub-district of Penshurst (see *Tonbridge*). The parishes of Ightham, Shipborne, and Wrotham.—SHEERNESS, Sheppey.—SITTINGBOURNE, Milton, except the parishes of Hartlip, Rainham, and Upchurch (see *Rochester*).—TENTERDEN, Cranbrook, Tenterden.—TONBRIDGE. The sub-district of Penshurst, in Seven Oaks, consisting of the parishes of Chiddingstone, Cowden, Edenbridge, Hever, Leigh, and Penshurst. The parishes of Capel, Tudeley, and Hadlow, and so much of the parishes of Bidborough and Tonbridge as lies north of a line drawn from the point where the eastern boundary of the parish of Penshurst crosses the Bidborough turnpike road, along the said road to Bound Corner, thence toward Tonbridge, along the Tonbridge Road, to a lane leading by St. Thomas's Farm, to the Hastings Road, thence along the Hastings Road to Fairthorne, thence along the lane leading to Pellet Gate, till it crosses the boundary of Pembury

parish.—TONBRIDGE WELLS. The parishes of Ashurst, Brenchley, Horsemonden, Pembury, Speldhurst. So much of the parishes of Bidborough and Tonbridge as is not in the district of the court holden at Tonbridge. Ticehurst. The parishes of Mayfield and Rotherfield.

LANCASHIRE.

ASHTON-UNDER-LYNE, Ashton-under-Lyne and Oldham, except the sub-districts of Denton and Haughton, Newton and Godley, Mottram, Oldham above Town, Oldham below Town, Middleton, Royton, Chadderton, and Crompton (see *Hyde* and *Oldham*.—BLACKBURN, Blackburn.—BOLTON, Bolton.—BURNLEY, Burnley, except the sub-districts of Colne and Pendle (see *Colne*).—BURY, Bury.—CHORLEY, Chorley.—CLITHEROE, Clitheroe.—COLNE. The sub-districts of Colne and Pendle, in Burnley, consisting of the townships of Colne, Trawden, Great Marsden, Little Marsden, Foulridge, Barrowford, Goldshaw, Barley with Wheatley, Old Laund, Rough Lea, and Wheatley Carr, in the parish of Whalley.—POULTON. The parishes of Poulton le Fylde and Bispham, and chapelry of Singleton, in the parish of Kirkham. The chapelry of Hambleton, in the parish of Kirkham. The township of Preesall with Hackensall, and chapelry of Stalmire with Staynal, in the parish of Lancaster.—GARSTANG, Garstang, except the townships of Preesall with Hackensall and chapelries of Hambleton and Stalmire with Staynal (see *Poulton*).—HASLINGDEN, Haslingden.—KIRKHAM, Fylde, except the parishes of Poulton le Fylde and Bispham, and chapelry of Singleton (see *Poulton*).—LANCASTER, Lancaster, except the chapelry of Arkholme with Cawood, the townships of Melling with Wrayton and Wennington, and the parish of Whittington (see *Kirkby Lonsdale.*)—LEIGH, Leigh.—LIVERPOOL, Liverpool, West Derby.—MANCHESTER, Manchester, Chorlton.—OLDHAM, the sub-districts of Oldham above Town, Oldham below Town, Middleton, Royton, Chadderton, and Crompton, in Ashton and Oldham, together consisting of the townships of Oldham, Alkrington, Royton, Tonge, Chadderton, and Crompton, in the parish of Prestwich-cum-Oldham; and the townships of Middleton and Thornham, in the parish of Middleton.—ORMSKIRK, Ormskirk.—PRESTON, Preston.—ROCHDALE, Rochdale.—SAINT HELEN'S, Prescot.—SALFORD, Salford, Worsley.—ULVERSTONE, Ulverstone, except the sub-district of Hawkshead (see *Ambleside*).—WARRINGTON, Warrington. The sub-districts of Grappenhall and Great Budworth, in Runcorn, except the Township of Great Budworth; consisting of the townships of Acton Grange, Daresbury, Hatton, Kekewich, Moore, Newton, Preston, Walton Superior and Inferior, in the parish of Runcorn; and the

townships of Antrobus, Appleton and Hull, Bartington, Crowley, Dutton, Seven Oaks, Stretton, Whitley Inferior and Superior in the parish of Great Budworth (see *Northwich*). The parish of Lymm.—WIGAN, Wigan.

LEICESTERSHIRE.

ASHBY-DE-LA-ZOUCH, Ashby-de-la-Zouch.—HINCKLEY, Hinckley. The parish of Wolvey.—LEICESTER, Barrow-upon-Soar, including the parish of Swithland and precinct of Ulverscroft, but excepting the rest of the sub-district of Quorndon, and excepting also the parishes of Barrow-upon-Soar, Seagrave, Sileby, and Walton-on-the-Wolds (see *Loughborough*). Blaby, Leicester. Billesden, except the parishes of Alexton, Tugby, Loddington, Skeffington, Owston, and Withcote, and the parochial chapelry of East Norton, the chapelry of Goadby, in the parish of Billesden, and the hamlet of Whatborough, in the parish of Tilton (see *Oakham* and *Uppingham*).—LOUGHBOROUGH, Loughborough. The parishes of Barrow-upon-Soar, Seagrave, Sileby, and Walton-on-the-Wolds; the sub-district of Quorndon, in Barrow-upon-Soar, except the parish of Swithland and precinct of Ulverscroft, consisting of the chapelries of Quorndon, Mount Sorrel North and South, Woodhouse, including Mapplewell, Woodhouse Eaves, and Beaumanor (see *Leicester*). The sub-district of Castle Donington in Shardlow, consisting of the parishes of Castle Donington, Kegworth, Ratcliffe, Kingston, Lockington, and Diseworth, and chapelry of Isley Walton. The parish of Breedon.—LUTTERWORTH, Lutterworth.—MARKET BOSWORTH, Market Bosworth.—MARKET HARBOROUGH, Market Harborough.—MELTON MOWBRAY, Melton Mowbray.

LINCOLNSHIRE.

BARTON-ON-HUMBER. The sub-district of Barton-upon-Humber, in Glanford Brigg, consisting of the parishes of East Halton, Killingholme North and South, Barrow, Barton St. Mary and St. Peter, Bonby, Ferriby South, Goxhill, Horkstow, Saxby, Thornton Curtiss, Ulceby, and Wootton, in Lincolnshire.—BOSTON, Boston.—BOURNE, Bourne.—BRIGG, Glanford-Brigg, except the sub-district of Barton-upon-Humber (see *Hull*).—CAISTOR. The sub-district of Caistor, in Caistor, consisting of the parishes of Cabourn, Cuxwold, Rothwell, Swallow, Swinhope, Caistor, Halton-le-Moor, Claxby, Kelsey South and North, Normanby-le-Wold, Croxby, Thoresway, Thorganby, Brocklesby, Keelby, Limber Magna, Riby, Bigby, Grasby, Searby-with-Owmby, Somerby, and Nettleton.—GAINSBOROUGH, Gainsborough.—GRANTHAM, Grantham. The parishes of Barkston, Foston, Haugham,

Marston, Allington East and West, Sedgebrook, and Syston.—GREAT GRIMSBY, the sub-district of Great Grimsby, in Caistor, consisting of the parishes of Great Grimsby, Ashley-cum-Fenby, Barnoldby-le-Beck, Aylesby, Bradley, Beelsby, Brigsley, Clee, Coates (Great and Little), Hatcliffe, Hawerby-with-Beesby, Healing, Humberstone, Laceby, Irby, Ravendale (East and West), Scarthe, Waltham, Immingham, Hadburgh, Stallingborough, Cleethorpe, and Newton Wold. The parishes of Grainsby, Holton-le-Clay, Tetney, and Waith.—HOLBEACH, Holbeach.—HORNCASTLE, except the parishes of East Barkwith, West Barkwith, West Torrington, and Wragby (see *Market Rasen*).—LINCOLN, Lincoln, except the parishes of Holton, Beckering, Wickenby, Cold Hanworth, Snarford, Friesthorpe, Faldingworth, Snelland, Normanby by Spital, Owmby, Caenby, and Loxby (see *Market Rasen*).—LOUTH, Louth, except the parishes of Grainsby, Holton-le-Clay, Tetney, Waith, Ludford, Hainton and South Willingham (see *Great Grimsby* and *Market Rasen*).—MARKET RASEN. The sub-district of Market Rasen, in Caistor, consisting of the parishes of Glentham, Kingerby, Kirkby-cum-Osgodby. Newton by Toft, Toft next Newton, Owersby (North and South), Linwood, Market Rasen, Rasen (Middle), Rasen (West), Stainton-le-Vale, Tealby, Thornton-le-Moor, Usselby, Walesby, Willingham (North), Snitterby, Waddingham, Lissington, Legsby, Sixhills, Kirkmond-le-Mire, Torrington (East), Bishop Norton, and Buslingthorpe. The parishes of Ludford, Hainton, South Willingham, East Barkwith, West Barkwith, West Torrington, Wragby, Holton Beckering, Wickenby, Cold Hanworth, Snarford, Friesthorpe, Faldingworth, Snelland, Normanby by Spital, Owmby, Caenby, and Loxby.—SLEAFORD, Sleaford.—SPALDING, Spalding. The parish of Crowland.—SPILSBY, Spilsby.—STAMFORD, Stamford.

MIDDLESEX.

BRENTFORD, Brentford.—EDMONTON. The sub-districts of Edmonton, Enfield, and Tottenham in Edmonton, consisting of the parishes of Edmonton, Enfield, and Tottenham.—UXBRIDGE. The sub-district of Iver, in Eton, consisting of the parishes of Iver, Fulmer, Langley Marish, Denham, Hedgerley, and the hamlet of Hedgerley Dean, in the parish of Farnham Royal. The parishes of Cranford, Harlington, and Harmondsworth, in Staines.

MIDDLESEX METROPOLITAN DISTRICTS.

1. WESTMINSTER. The district of the Westminster County Court of Middlesex shall include all within a line drawn from

the point where the cities of London and Westminster meet on the river Thames along the boundary of the city of London to Holborn-bars, thence along the middle of Holborn, Oxford-street, and the Uxbridge-road until the Uxbridge-road crosses the Serpentine River, thence along the Serpentine River to Rotten-row, thence along the middle of the road through Albert Gate to the Knightsbridge-road, thence along the middle of the Knightsbridge-road to Sloane-street, thence along the middle of Sloane-street, across Sloane-square, along the middle of Lower Sloane-street, Turk's-row, and Franklin's-row to the gate leading into the road which divides the Kitchen Gardens of Chelsea Hospital from the Governor's Garden and Garden Meadow, thence along the said road and the boundary of the said Hospital Kitchen Garden to the river Thames, thence along the Thames to the point first described. —2. BROMPTON. The district of the Brompton County Court of Middlesex shall include all within a line drawn from the point on the river Thames where the parishes of Acton and Hammersmith meet, along the common boundary of the parishes of Acton and Hammersmith till it crosses the Uxbridge-road, thence along the middle of the Uxbridge-road till it crosses the Serpentine River, thence along the western boundary of the Westminster County Court of Middlesex herein-before described, to the river Thames, and along the Thames to the point first described.—3. MARY-LE-BONE. The district of the Mary-le-bone County Court of Middlesex shall include all within a line drawn from the point where the common boundary of the parishes of Hammersmith and Acton crosses the Uxbridge-road, along the middle of the Uxbridge-road and Oxford-street to Portman-street, thence along the middle of Portman-street, the street on the west side of Portman-square, Gloucester-street, Gloucester-place, across the New-road, Upper Gloucester-place, the street on the east side of Dorset-square, Dorset-place, Upper Gloucester-place, Taunton-place, Park-road, and Primrose Hill Road, till it meets the Avenue-road, thence along the middle of the Avenue-road and the New-road to Finchley to the northern boundary of the parish of Saint John Hampstead, thence westward along the boundary of the parish of Saint John Hampstead to the Edgeware-road near Cricklewoods, thence along the Edgeware-road to the boundary of the parish of Willesden at Brent-bridge, thence along the northern and western boundary of the parish of Willesden including the whole parish of Willesden and precinct of Twyford Abbey, till it meets the common boundary of the parishes of Acton and Hammersmith in the point first described.—4. BLOOMSBURY. The district of the Bloomsbury County Court of Middlesex shall include all within a line drawn from the

point where the boundary of the parish of Saint John Hampstead crosses the New-road to Finchley, along the eastern boundary line of the Mary-le-bone County Court of Middlesex herein-before described to Oxford-street, thence along the middle of Oxford-street to King-street, thence along the middle of King-street, Upper King-street, Southampton-row, the street on the east side of Russell-square, Woburn-place, the street on the east side of Tavistock-square, Upper Woburn-place, to the New-road, thence along the middle of the New-road to the boundary of the parish of Saint Pancras at King's Cross, thence along the eastern and northern boundary of the parish of St. Pancras till it meets the boundary of the parish of Saint John Hampstead, thence westward along the northern boundary of the parish of Saint John Hampstead to the point first described.—5. CLERKENWELL. The district of the Clerkenwell County Court of Middlesex shall include all within a line drawn from the point where the boundary of the City of London crosses Finsbury-place, along the middle of Finsbury-place, the street on the west side of Finsbury-square, the City-road, Winkworth-buildings, East-road, Brudenell-place, and the New North-road, to the Regent's Canal, thence along the middle of the Regent's Canal until it is crossed by the Kingsland-road, thence along the middle of the Kingsland-road to the southern boundary of the parish of Tottenham, thence westward along the boundary of the parish of Tottenham to the boundary of the parish of Hornsea, thence along the boundary of the parish of Hornsea and chapelry of Highgate, including the whole of the said parish and chapelry, to the boundary of the district of the Bloomsbury County Court of Middlesex, thence along the eastern boundary of the last-mentioned district to the point where King-street meets Holborn, thence along the middle of Holborn to Holborn-bars, thence along the northern boundary of the City of London to the point first described.—6. SHOREDITCH. The district of the Shoreditch County Court of Middlesex shall include all within a line drawn from the point where the boundary of the City of London crosses Finsbury-place, along the eastern boundary of the district of the Clerkenwell County Court of Middlesex to the southern boundary of the parish of Tottenham, thence eastward along the said boundary to the boundary of the County of Middlesex, thence southward along the boundary of the said county to the northern boundary of the parish of Stratford-le-Bow, thence westward along the boundary of the said parish until it is crossed by the southern side of the Eastern Counties Railway, thence westward along the southern side of the Eastern Counties Railway till it crosses Brick-lane, thence along the middle of Brick-lane, Phœnix-street, Wheeler-street, and White Lion-

street to Norton-folgate, thence along the middle of Norton-folgate to the boundary of the City of London, thence westward along the boundary of the City of London to the point first described.—7. BOW. The district of the Bow County Court of Middlesex shall include the parishes of Bromley and Stratford-le-Bow, and the Superintendent Registrar's district of West Ham.—8. WHITECHAPEL. The district of the Whitechapel County Court of Middlesex shall include all within a line drawn from the point where the eastern boundary of the City of London leaves the river Thames, along the said boundary until it is crossed by Norton-folgate, thence along the middle of Norton-folgate, White Lion-street, Wheeler-street, Phœnix-street, and Brick-lane, until it is crossed by the southern side of the Eastern Counties Railway, thence eastward along the southern side of the said railway until it crosses the boundary of the parish of Stratford-le-Bow, thence southward along the western boundary of the parishes of Stratford-le-Bow and Bromley to the boundary of the parish of Poplar, thence along the common boundary of the parishes of Bromley and Poplar to the boundary of the County of Middlesex, thence southward along the boundary of the said county to the river Thames, thence along the river Thames to the point first described.

MONMOUTHSHIRE.

ABERGAVENNY, Abergavenny, except the parishes of Aberystruth Bedwelty, Bettws Newyd, Bryngwyn, and hamlet of Clytha (see *Tredegar* and *Usk*).—CHEPSTOW. Chepstow, except the parishes of Llansoy and Llangwn, Llanvihangel-Tor-y-mynydd, Wolvesnewton, and the western division of Newchurch (see *Usk*).—MONMOUTH, Monmouth, except the parishes of Llandenny, Llanishen, and Ragland (see *Usk*).—NEWPORT, Newport, except the parishes of Llanhennock, Kemeys Inferior, and Tredunnoch (see *Usk*).—PONTYPOOL, Pontypool, except the sub-district of Usk and the parishes of Glascoed, Llandegoeth, and Llangibby (see *Usk*).—TREDEGAR, parishes of Aberystruth and Bedwelty, in Abergavenny.—USK. The sub-district of Usk, in Pontypool, consisting of the parishes of Usk, Trostrey, Llangeview, Gwernesney, Llanllowel, Llanbadoch, Llantrissent, Kemeys Commander, and Goytrey, with the hamlet of Gwehellog and precinct of Monkswood. The parishes of Bettws Newydd, Bryngwym, Glascoed, Kemeys Inferior, Llandegoeth, Llangwn, Llansoy, Llanvihangel-Tor-y-mynydd, Llanishen, Llandenny, Llanhennock, Llangibby, the western division of Newchurch, Ragland, Tredunnoch, Wolvesnewton, and the hamlet of Clytha.

NORFOLK.

ATTLEBOROUGH, Guiltcross, Wayland.—AYLSHAM, Aylsham.—DOWNHAM MARKET, Downham Market, except the parishes of Holme next Runcton, Tottenhill, Wormegay, Watlington, Wiggenhall St. Mary Magdalene, Wiggenhall St. Germains, and Wiggenhall St. Peter (see *King's Lynn*). —EAST DEREHAM, Mitford and Launditch.—HARLESTON, Depwade, except the sub-district of Forncett, and the parishes of Diss, Scole, Thorpe Parva, Frenze, and Thelverton, in the sub-district of Diss (see *Wymondham* and *Eye*). The parishes of Flixton, Homersfield, All Saints South Elmham, St. Cross South Elmham, St. James South Elmham, St. Margaret South Elmham, St. Michael South Elmham, St. Nicholas South Elmham, and St. Peter South Elmham, in Wangford. The parishes of Fressingfield, Mendham, Metfield, Syleham, Weybread, Wingfield, and Withersdale, in the sub-district of Stradbroke, in Hoxne.—HOLT, Erpinghan, except the sub-district of North Walsham, in Erpingham, (see *North Walsham*).—KING'S LYNN, King's Lynn, Freebridge Lynn. The parishes of Anmer, Clenchwarton, Dersingham, Heacham, Holme next Runcton, Ingoldesthorpe, Sedgeford, Shernborne, Snettisham, Terrington St. Clement, Terrington St. John, Tilney All Saints, Tilney St. Lawrence, Tilney cum Islington, Tottenhill, Watlington, Wiggenhall St. Mary Magdalen, Wiggenhall St. Germains, Wiggenhall St. Peter, and Wormegay.—LITTLE WALSINGHAM, Walsingham, Docking, except the parishes of Anmer, Dersingham, Heacham, Ingoldesthorpe, Sedgeford, Shernborne, and Snettisham (see *King's Lynn*).—NORTH WALSHAM, Tunstead and Happing. The sub-district of North Walsham, in Erpingham, consisting of the parishes of North Walsham, Antingham, Gimingham, Gunton, Knapton, Repps North and South, Sidestrand, Thorpe Market, Trimingham, Trunch, and Mundsley.—NORWICH, Blofield, Henstead, Norwich, St. Faith. The sub-district of Loddon, in Loddon and Clavering, consisting of the parishes of Brooke, Burgh Apton, Heckingham, Howe, Yelverton, Alpington, Ashby, Carleton, Chedgrave, Claxton, Hardley, Hillington, Langley, Loddon, Sisland, and Thurton. The sub-district of Costessy, in Forehoe, consisting of the parishes of Barford, Barnham-Broom, Bawburgh, Bowthorpe, Brandon Parva, Carleton Forehoe, Colton, Costessy, Coston, Easton, Marlingford, Runhall, Wellborne, and Wramplingham.—SWAFFHAM, Swaffham.—THETFORD, Thetford.—WYMONDHAM, Forehoe, except the sub-district of Costessy (see *Norwich*). The sub-district of Forncett, in Depwade, consisting of the parishes of Ashwelthorpe, Aslacton, Bunwell, Carlton Rode, Forncett St. Mary

and St. Peter, Fundenhall, Hapton, Moulton Great, Tacolneston, and Tibbenham. — GREAT YARMOUTH, East and West Flegg. Yarmouth. The sub-district of Gorlestone, in Mutford and Lothingland, consisting of the parishes of Hopton, Gorlestone, Fritton, Burgh Castle, Bradwell, and Belton.

NORTHAMPTONSHIRE.

BRACKLEY, Brackley. — DAVENTRY, Daventry. — KETTERING, Kettering.—NORTHAMPTON, Brixworth, Hardingstone, Northampton.—OUNDLE, Oundle.—PETERBOROUGH, Whittlesea, Peterborough, except the parish of Crowland (see *Spalding*). — THRAPSTONE, Thrapstone, the parishes of Shelton, Dean, Tilbrook, Great Catworth, and Long Stow. TOWCESTER, Potterspury, except the parishes of Calverton, Wolverton, and Stoney Stratford (see *Newport Pagnell*). Towcester.—WELLINGBOROUGH, Wellingborough.

NORTHUMBERLAND.

ALNWICK, Alnwick. — BELFORD, Belford. — BELLINGHAM, Bellingham.—BERWICK, Berwick.— HALTWHISTLE. Haltwhistle, except the parishes of Kirkhaugh and Knaresdale (see *Alston*).—HEXHAM, Hexham, except the parish of Shotley and chapelry of Whittonstall (see *Shotley Bridge*). MORPETH, Morpeth.— NEWCASTLE, Castle Ward, Newcastle.—NORTH SHIELDS, Tynemouth.—ROTHBURY, Rothbury.—WOOLER, Glendale.

NOTTINGHAMSHIRE.

BINGHAM, Bingham, except the parishes of Edwalton, Keyworth, Plumtree, and Tollerton (see *Nottingham*).—EAST RETFORD, East Retford. — MANSFIELD, Mansfield, except the sub-district of Blackwell (see *Alfreton*). — NEWARK, Newark, except the parishes of Barkston, Foston, Haugham, Marston, Allington East and West, Sedgebrook, and Syston (see *Grantham*). Southwell, except the parishes of Boughton, Edwinstow, Kirton, Rufford, Wellow, and Walesby (see *Worksop*).—NOTTINGHAM, Nottingham, Radford. Basford, except the parishes of Annesley with Felley, Heanor, Ilkestone, Kirkby in Ashfield, and Selstone (see *Alfreton* and *Belper*). The parishes of Attenborough, Brancote, Stapleford, Edwalton, Keyworth, Plumtree, and Tollerton.—WORKSOP, Worksop. The parishes of Boughton, Edwinstow, Kirton, Rufford, Wellow, and Walesby.

OXFORDSHIRE.

BANBURY, Banbury.—BICESTER, Bicester.—CHIPPING NORTON, Chipping Norton.—OXFORD, Oxford, Headington. The sub-district of Cumner in Abingdon, except the parish of Besselsleigh and parish or chapelry of Wootton, consisting of the parishes of Cumner, Binsey, North Hincksey, South Hincksey, and Wytham, and precinct of Seacourt (see *Abingdon*).—THAME, Thame. The parish of Illmire.—WITNEY, Witney.—WOODSTOCK, Woodstock.—OAKHAM, Oakham. The parishes of Owston, Withcote, and the hamlet of Whatborough, in the parish of Tilton.—UPPINGHAM, Uppingham. The parishes of Alexton, Tugby, Loddington, Skeffington. The chapelry of Goadby, in the parish of Billesden. The parochial chapelry of East Norton.

SHROPSHIRE.

BISHOPS CASTLE, Clun. The parish of Church Stoke and Township of Aston.—BRIDGENORTH, Bridgenorth.—CLEOBURY, Cleobury Mortimer.—DRAYTON, Drayton Market.—LUDLOW, Ludlow. The parishes of Acton Scott, Sibdon Carwood, and Wistanstow.—MADELEY, Madeley, Shiffnall.—NEWPORT, Newport.—OSWESTRY, Oswestry, except the parish of Chirk (see *Ruabon*). The sub-district of Ellesmere, in Ellesmere, consisting of the parishes of Hordley, Welshampton, and Ellesmere, except the township of Penley.—SHREWSBURY, Atcham, Shrewsbury, Church Stretton, except the parishes of Acton Scott, Sibdon, Carwood, and Wistanstow (see *Ludlow*). The sub-district of Baschurch, in Ellesmere, consisting of the parishes of Petton, Baschurch, including chapelry of Little Ness, Middle, including the chapelry of Hadnall Ease, and parish of Great Ness.—WEM, Wem and Whitchurch, except the parishes of Ightfield and Whitchurch (see *Whitchurch*).—WELLINGTON, Wellington.—WHITCHURCH, the parishes of Whitchurch and Ightfield. The parish of Hanmer, and chapelry of Iscoyd. The townships of Agden, Bradley, Chidlow, Chorlton, Cuddington, Malpas, Newton by Malpas, Oldcastle, Overton, Shocklach Church, Shocklach Oviatt, Stockton, Whichaugh, Wigland, and the chapelry of Threapwood. The townships of Audlem, Bickley, Buerton, Dodcott with Wilkesley, Hampton, Macefen, Marbury with Quoisley, Norbury, Tushingham with Grindley, and Wirswall.

SOMERSETSHIRE.

BATH, Bath. The sub-district of Newton, in Keynsham, consisting of the parishes of Burnett, Compton-Dando, Cor-

ston, Marksbury, Newton St. Loe, Priston Saltford, and Stanton Prior.—BRIDGEWATER, Bridgewater.—CHARD, Chard, except the sub-district of Crewkerne and the parishes of Kingstone, Seavington St. Michael, Seavington St. Mary, Shepton Beauchamp, Stocklinch Ottersey, Stocklinch St. Magdalen, and West Dawlish (see *Crewkerne*)—CLUTTON, Clutton.—CREWKERNE. The sub-district of Crewkerne, in Chard, consisting of the parishes of Chillington, Crewkerne, Cudworth, Dinnington, Hinton St. George, Lopen, Merriott, and Wayford. The parishes of Chiselborough, Middle Chinnock, West Chinnock, Haselbury Plucknett, Kingstone, North Perrot, Seavington St. Michael, Seavington St. Mary, South Petherton, Shepton Beauchamp, Stocklinch Ottersey, Stocklinch St. Magdalen, and West Dawlish. The sub-district of Misterton, in Bedminster, consisting of the parishes of Cheddington, Misterton, Mosterton, Seaborough, and South Perrott.—FROME, Frome. The parishes of Batcombe, Downhead, East Cranmore, Stoke Lane, and Upton Noble.—LANGPORT, Langport. The parish of Stoke St. Gregory and chapelry of Longload, in the parish of Martock.—TAUNTON, Taunton, except the parish of Stoke St. Gregory (see *Langport*).—WELLINGTON, Wellington.—WELLS, Wells. Shepton Mallet, except the parishes of Batcombe, Downhead, East Cranmore, Stoke Lane, and Upton Noble (see *Frome*). The sub-districts of Axbridge and Winscombe, and Wedmore and Mark, in Axbridge, consisting of the parishes of Axbridge, Rowberrow, Winscombe, Christon, Compton Bishop, Cheddar, Shipham, Loxton, and Nylandwith-Batcombe, Wedmore, Chapel Allerton, Mark, Biddisham, Wear, and Badgworth.—WESTON-SUPER-MARE, Axbridge, except the sub-districts of Axbridge and Winscombe, Wedmore and Mark (see *Wells.*)—WILLITON, Williton.—WINCANTON, Wincanton.—YEOVIL, Sherborne.—YEOVIL, Yeovil, except the parishes of Chiselborough, Middle Chinnock, West Chinnock, Haselbury Plucknett, North Perrott, South Petherton, and chapelry of Longload (see *Crewkerne* and *Langport*).

STAFFORDSHIRE.

BURTON-ON-TRENT, Burton, except the sub-district of Repton (see *Derby*).—CHEADLE, Cheadle. The parish of Croxden with Great Yate.—HANLEY, Stoke-on-Trent, except the townships of Clayton and Seabridge (see *Newcastle-under-Lyme*). Woolstanton and Burslem, except the township of Knutton (see *Newcastle-under-Lyme*). The parishes of Norton-on-the-Moors and Trentham.—LEEK, Leek and Longnor, except the parish of Norton-on-the-Moors (see *Hanley*).—LICHFIELD, Lichfield, except the parishes of Rugeley, Longdon, Colton, Armitage-with-Hansacre, Pipe-

Ridware, Hamstall-Ridware, and Mavesyn-Ridware (see *Rugeley*).—NEWCASTLE-UNDER-LYME, Newcastle-under-Lyme. The townships of Clayton, Seabridge, and Knutton.—OLDBURY, West Bromwich, except the sub-district of Handsworth and Perry Bar (see *Birmingham*). The chapelry of Smethwick, in the parish of Harborne.—RUGELEY. The parishes of Rugeley, Longdon, Colton, Armitage-with-Hansacre, Pipe-Ridware, Hamstall-Ridware, and Mavesyn-Ridware.—STAFFORD, Stafford. The sub-district of Penkridge, in Penkridge, consisting of the parish of Penkridge (excepting the chapelry of Stretton), the parish of Church Eaton, the chapelry of Baswich, in the parish of Baswich, the extra-parochial precinct of Teddesley-Hay, and the township of Kinvaston, in the parish of Wolverhampton (see *Wolverhampton*).—STONE, Stone, except the parish of Trentham (see *Hanley*).—UTTOXETER, except the parish of Croxden with Great Yate (see *Cheadle*).—WALSALL, Walsall.—WOLVERHAMPTON, Wolverhampton and Seisdon. The sub-districts of Breewood and Cannock, in Penkridge, consisting of the parishes of Breewood, Lapley, Bushbury, Cannock, Shareshill, Norton Canes; the townships of Featherstone, Hatherton, and Hilton, in the parish of Wolverhampton, the chapelry of Stretton, in the parish of Penkridge, and the extra-parochial precinct of Cheslyn-Hay.

SUFFOLK.

BECCLES, Loddon and Clavering, except the sub-district of Loddon (see *Norwich*). Wangford, except the parishes of Flixton, Homersfield, All Saints South Elmham, St. Cross South Elmham, St. James South Elmham, St. Margaret South Elmham, St. Michael South Elmham, St. Nicholas South Elmham, St. Peter South Elmham (see *Harleston*).—BURY ST. EDMUNDS, Bury, Thingoe. The sub-districts of Walsham-le-Willows and Rattlesden in Stow, except the parishes of Elmswell and Thurston, consisting of the parishes of Ashwell, Badwell, Hinderclay, Hunston, Langham, Norton, Rickinghall Inferior, Stowlangtoft, Walsham-le-Willows, Wattisfield, Buxhall, Onehouse, Shelland, Wetherden, Beyton, Drinkstone, Felsham, Gedding, Hessett, Rattlesden, Tostock, and Woolpit (see *Stow Market*).—EYE, Hartismere. The parishes of Diss, Scole, Thorpe Parva, Frenze, Thelveton, in the sub-district of Diss, in Depwade. The parishes of Denham, Stradbroke, and Hoxne, in the sub-district of Stradbroke in Hoxne.—FRAMLINGHAM, Hoxne except the sub-district of Stradbroke (see *Eye* and *Harleston*). Plomesgate, except the sub-districts of Orford and Wickham Market (see *Woodbridge*).—HADLEIGH, Cossford, except the parishes of Brettenham, Cockfield, Kettlebaston,

Lavenham, Preston, and Thorpe Morieux (see *Sudbury*).—HALESWORTH, Blything.—HAVERHILL, Risbridge. The parishes of Ridgewell and Stambourne.—IPSWICH, Bosmere and Claydon, Ipswich, Sampford.—LOWESTOFT, Mutford and Lothingland, except the sub-district of Gorlestone (see *Great Yarmouth*).—MILDENHALL, Mildenhall.—STOW MARKET, Stow, including the parishes of Elmswell and Thurston, but excepting all the rest of the sub-districts of Walsham-le-Willows and Rattlesden (see *Bury St. Edmunds*).—SUDBURY, Sudbury. The parishes of Brettenham, Cockfield, Kettlebaston, Lavenham, Preston, and Thorpe Morieux.—WOODBRIDGE, Woodbridge. The sub-districts of Orford and Wickham Market, in Plomesgate, consisting of the parishes of Wickham Market, Blaxhall, Chillesford, Iken, Orford, Sudbourne, Tunstall, Wantisden, Butley, Campsey-Ash, Eyke, Hacheston, Marlesford, and Rendlesham.

SURREY.

CHERTSEY, Chertsey. Staines, except the parishes of Cranford, Harlington, and Harmondsworth (see *Uxbridge*). The sub-district of Egham, in Windsor, comprising such parts of the parishes of Egham and Old Windsor, as lie south and west of the road leading from the Thames, near Leatherlake House, up Priest Hill, through Bishopsgate and Hardimans, to the twenty-third mile stone on the Reading Road, and the whole of the parishes of Sunning Hill and Thorpe.—CROYDON, Croydon.—DORKING, Dorking.—EPSOM, Epsom.—FARNHAM, Farnborough, Farnham, except the parish of Bramshott (see *Midhurst*).—GODALMING, Hambleton, except the parishes of Shalford, St. Martha on the Hill, and Wonersh (see *Guildford*).—GUILDFORD, Guildford. The parishes of Shalford, St. Martha on the Hill, and Wonersh.—KINGSTON, Kingston.—REIGATE, Godstone, Reigate.—WANDSWORTH, Wandsworth and Clapham. Richmond.—SOUTHWARK, the district of the Southwark County Court of Surrey shall include the Superintendent Registrar's Districts of Rotherhithe, Bermondsey, Saint George Southwark, Saint Olave, and Saint Saviour, and so much of the Superintendent Registrar's districts of Newington and Lambeth as lies north of a line drawn from the River Thames at Lambeth Stairs, along the middle of Church-street, Lambeth, to the Westminster-road, thence along the middle of the Westminster-road to Brook-street, thence along the middle of Brook-street and Lambeth-place and Garden-place, by the south side of the Fishmongers' Almshouses, to Newington Butts, thence along the middle of Newington Butts to Cross-street, thence along the middle of Cross-street to the Walworth-road, thence along the middle of the Walworth-road to East-street, thence along

the middle of East-street, Richmond-terrace, Apollo-buildings, Prior-place, Sion-place, and East-lane, until it is cut by the boundary of Saint George Southwark.—LAMBETH. The district of the Lambeth County Court of Surrey shall include the Superintendent Registrar's district of Camberwell, and so much of the Superintendent Registrar's districts of Lambeth and Newington as is not in the district of the Southwark County Court of Surrey, and so much of the Superintendent Registrar's district of Greenwich as lies west of the Croydon Railway.

SUSSEX.

ARUNDEL, Worthing, except the sub-district of Broadwater, and excepting also the parishes of Angmering, Clapham, East Preston, Goring, Kingston, Patching, and West Ferring (see *Worthing*).—BRIGHTON, Brighton, Steyning, except the parishes of Buttolphs, Coombs, and Sompting (see *Worthing*). The parishes of Ovingdean and Rottingdean.—CHICHESTER, Westbourne, West Hampnett. Chichester, including the parish of Hindon, but excepting all the rest of the sub-district of Sutton (see *Petworth*).—CUCKFIELD, Cuckfield. The parish of Wivelsfield.—EAST GRINSTEAD, East Grinstead.—HASTINGS, Hastings, Battle, Rye.—HORSHAM, Horsham.—LEWES, Eastbourne, Hailsham, Lewes, except the parishes of Wivelsfield, Ovingdean, and Rottingdean (see *Cuckfield* and *Brighton*). Uckfield, except the parishes of Mayfield and Rotherfield (see *Tonbridge Wells*).—MIDHURST, Midhurst, except the parishes of Selham, Tillington, Lodsworth, Lurgashall, and North Chapel (see *Petworth*). The parish of Bramshott.—PETWORTH, Petworth, Thakeham, except the parish of Finden (see *Worthing*). The sub-district of Sutton, in Chichester, except the parish of Hindon, consisting of the parishes of Egdean, Fittleworth, Coates, Duncton, Burton, Barlavington, Sutton, Bignor, Bury, Graffham, Heyshott, and tything of West Burton (see *Chichester*). The parishes of Selham, Tillington, Lodsworth, Lurgashall, and North Chapel.—WORTHING, the sub-district of Broadwater, in Worthing, consisting of the parishes of Broadwater, Durrington, Heene, Lancing, and West Tarring. The parishes of Buttolphs, Coombs, and Sompting. The parishes of Angmering, Clapham, East Preston, Finden, Goring, Kingston, Patching, West Ferring.

WARWICKSHIRE.

ALCESTER. Alcester, except the parish of Ipsley (see *Redditch*).—ATHERSTONE, Atherstone, except the parish of Ansley (see *Nuneaton*).—BIRMINGHAM, Aston, Birmingham. King's Norton, except the parish of Beoley and cha-

pelry of Smethwick (see *West Bromwich and Redditch*). The sub-district of Coleshill, in Meriden, except the parish of Church Bickenhill, consisting of the parishes of Coleshill, Lea Marston, Maxstoke, Shustoke, Sheldon, Upper Whitacre, and Lower Whitacre (see *Solihull*). The sub-district of Handsworth and Perry Bar, in West Bromwich, consisting of the parish of Handsworth. COVENTRY, Coventry, Foleshill, except the parishes of Bedworth and Wolvey (see *Hinckley and Nuneaton*). The sub-district of Meriden, in Meriden, except the parish of Hampton in Arden, consisting of the parishes of Berkeswell, Meriden, Packington Great and Little, Corley, Fillongley, and Allesley, and the chapelry of Coundon in the parish of Holy Trinity (see *Solihull*). NUNEATON, Nuneaton. The parishes of Ansley and Bedworth.—RUGBY, Rugby.—SOLIHULL, Solihull. The parishes of Church Bickenhill, and Hampton in Arden.—SOUTHAM, Southam.—STRATFORD, Stratford, except the sub-district of Wootton Wawen (see *Warwick*).—TAMWORTH, Tamworth.—WARWICK, Warwick. The sub-district of Wootton Wawen, in Stratford, consisting of the parishes of Wootton Wawen, Beaudesert, Preston-Baggott, Claverdon, Bearley, and Wolverton.

WESTMORELAND.

AMBLESIDE. The sub-district of Ambleside, in Kendal, consisting of the parishes of Grasmere and Windermere, the townships of Crook and Hugil, and the chapelries of Kentmere, Stavelynether and Over, in the parish of Kendal. The sub-district of Hawkshead, in Ulverstone, consisting of the parish of Hawkshead, and the chapelries of Church Conistone and Torver, in the parish of Ulverstone.—APPLEBY, East Ward.—KIRKBY KENDAL, Kendal, except the sub-districts of Ambleside and Kirkby Lonsdale (see *Ambleside and Kirkby Lonsdale*).—KIRKBY LONSDALE, Sedbergh. The sub-district of Kirkby Lonsdale, in Kendal, consisting of the parish of Kirkby Lonsdale, except the chapelry of Firbank, the townships of Holme, Burton in Kendal, and Preston Patrick, in the parish of Burton in Kendal, the township of Farleton, in the parish of Beetham, and the township of Preston Richard, in the parish of Heversham. The sub-district of Bentham in Settle, consisting of the parishes of Bentham, and Thornton in Lonsdale, and the township of Clapham-cum-Newby, in the parish of Clapham. The chapelry of Arkholme with Cawood, the townships of Melling with Wrayton and Wennington, the parish of Whittington.

WILTSHIRE.

BRADFORD, Bradford, except the parish of Broughton Gifford and chapelry of Atworth (see *Melksham*).—CALNE,

Calne.—CHIPPENHAM, Chippenham.—DEVIZES, Devizes.—MALMESBURY, Malmesbury, Tetbury, except the parishes of Kingscote, Newington Bagpath, and Ozleworth (see *Dursley*).—MARLBOROUGH, Marlborough, Pewsey.—MELKSHAM, Melksham, except the parishes of Hilperton and Trowbridge (see *Trowbridge*). The parish of Broughton Gifford and chapelry of Atworth.—SALISBURY, Alderbury, Amesbury, Salisbury, Wilton.—SWINDON, Cricklade and Wootton Bassett, Highworth and Swindon.—TROWBRIDGE, the parishes of Hilperton and Trowbridge.—WARMINSTER, Warminster.—WESTBURY, Westbury and Whorwelsdon.—BROMSGROVE, Bromsgrove, except the parishes of Alvechurch, Coston Hackett, and Tardebigg (see *Redditch*).—DROITWICH, Droitwich, except the parish of Hartlebury and hamlet of Upper Mitton (see *Kidderminster*).—DUDLEY, Dudley.—EVESHAM, Evesham.—KIDDERMINSTER, Kidderminster. The parish of Hartlebury and hamlet of Upper Mitton.—PERSHORE, Pershore.—REDDITCH. The parishes of Tardebigg, Ipsley, Beoley, Alvechurch, and Coston Hackett.—SHIPSTON, Shipston.—STOURBRIDGE, Stourbridge.—TENBURY, Tenbury.—UPTON, Upton-on-Severn.—WORCESTER, Worcester, Martley.

YORKSHIRE (*East Riding*).

BEVERLEY, Beverley. The sub-districts of Brandsburton and Hornsea, in Skirlaugh, consisting of the parishes of Atwick, Catwick, Goxhill, Hornsea, Brandsburton, Mappleton, (except the township of Great Cowden), Bewholme, and Sigglesthorne, the townships of Dunnington, in the parish of Beeford, of Hempholme in the parish of Leven, and of Bonwick, in the parish of Skipsea.—BRIDLINGTON, Bridlington.—GREAT DRIFFIELD, Driffield.—HEDON, Patrington. The parish of Hedon and township of Preston. The sub-district of Humbleton, in Skirlaugh, consisting of the parishes of Humbleton and Sproatley, and the townships of Garton-with-Grimston, Lelley, and Wyley.—HOWDEN, Howden.—KINGSTON-ON-HULL, Kingston-on-Hull. Sculcoates, except the parish of Hedon and township of Preston (see *Hedon*). Skirlaugh, except the sub-districts of Brandsburton, Humbleton, and Hornsea (see *Beverley* and *Hedon*).—POCKLINGTON, Pocklington.

YORKSHIRE (*West Riding*).

BARNSLEY, Ecclesfield. The sub-districts of Penistone and Wortley in Wortley, consisting of the townships of Gunthwaite, Ingbirchworth, Langsett, Hunshelf, Hoylandswayne, Penistone, Oxspring, Thurlstone, Thurgoland, Wortley, Tankersley.—BOSTON, Tadcaster. The townships of Linton and

Wetherby.—BRADFORD, Bradford.—DEWSBURY, Dewsbury. — DONCASTER, Doncaster.— GOOLE, Goole. — HALIFAX, Halifax.—HOLMFIRTH. The townships of Austonley, Holme, Honley, Nether Thong, and Upper Thong, in the parish of Almondbury. The parish of Kirkburton, except the townships of Kirkburton and Shelley (see *Huddersfield*).—HUDDERSFIELD, Huddersfield, including the townships of Kirkburton and Shelley, but excepting the rest of the parish of Kirkburton, and excepting also the townships of Austonley, Holme, Honley, Nether Thong, Upper Thong, in the parish of Almondbury (see *Holmfirth*).—KEIGHLEY, Keighley.—KNARESBOROUGH, Knaresborough, except the townships of Linton and Wetherby (see *Boston*).—LEEDS, Leeds, Hunslet,—OTLEY, Otley.—PONTEFRACT, Pontefract.—RIPON, Pateley Bridge, Ripon. — ROTHERHAM, Rotherham. — SADDLEWORTH, Saddleworth. — SELBY, Selby. — SETTLE, Settle, except the sub-district of Bentham (see *Kirkby Lonsdale*).—SHEFFIELD, Ecclesall Bierlow, Sheffield, Wortley, except the sub-districts of Penistone and Wortley, in Wortley (see *Barnsley*).—SKIPTON, Skipton.—THORNE, Thorne.—TODMORDEN, Todmorden.—WAKEFIELD, Wakefield.

YORKSHIRE (*North Riding*).

EASINGWOLD, Easingwold.—HELMSLEY, Helmsley.—LEYBURN, Askrigg, Bedale, Leyburn.—NEW MALTON, Malton, Pickering.—NORTHALLERTON, Northallerton.—RICHMOND, Reeth, Richmond.—SCARBOROUGH, Scarborough.—STOKESLEY, Stokesley, Guisborough.—THIRSK, Thirsk.—WHITBY, Whitby.—YORK, York.

ANGLESEY.

LLANGEFNI, Anglesey. The sub-district of Beaumaris, in Bangor and Beaumaris, being all the remaining part of the Isle of Anglesey.

BRECKNOCKSHIRE.

BRECKNOCK, Brecknock.—BUILTH, Builth.—CRICKHOWELL, Crickhowell.—HAY, Hay.

CAERMARTHENSHIRE.

CAERMARTHEN, Caermarthen.—LLANDEILOFAWR, Llandeilofawr.—LLANDOVERY, Llandovery.—LLANELLY, Llanelly.—NEWCASTLE IN EMLYN, Newcastle in Emlyn.

CAERNARVONSHIRE.

BANGOR, Bangor and Beaumaris, except the sub-district of Beaumaris (see *Llangefni*).—CARNARVON, Carnarvon.—PORTMADOC, Festiniog.—PWLLHELI, Pwllheli.

CARDIGANSHIRE.

ABERAYRON, Aberayron.—ABERYSTWITH, Aberystwith.—CARDIGAN, Cardigan.—LAMPETER, Lampeter, Tregaron.

DENBIGHSHIRE.

DENBIGH, the sub-district of Denbigh, in St. Asaph, consisting of the parishes of Denbigh, Hewllan, Llansannan, and Llanefydd. The parishes of Rodfarry and Llanfairtalhaiarn. The parishes of Nantglyn, Llanrhaiadr, Llandyrnog, and Llangwyfan. LLANRWST, Llanrwst.—RUABON, the sub-district of Ruabon, in Wrexham, consisting of the parishes of Ruabon and Erbestock. The parish of Chirk, in Oswestry.—The parish of Llangollen, in Corwen.—RUTHIN, Ruthin, except the parishes of Nantglyn, Llanrhaiadr, Llandyrnog and Llangwyfan (see *Denbigh*).—ST. ASAPH, except the sub-district of Denbigh, and the parishes Bodfarry and Llanfairtalhaiarn (see *Denbigh*).—WREXHAM, Wrexham, except the sub-district of Ruabon, and the townships of Agden, Bradley, Chidlow, Chorlton, Cuddington, Malpas, Newton by Malpas, Oldcastle, Overton, Shocklach Church, Shocklach Oviatt, Stockton, Whichaugh, Wigland, and the Chapelry of Threapwood (see *Ruabon* and *Whitchurch*). The sub-district of Overton, in Ellesmere, consisting of the parish of Overton and township of Penley.

FLINTSHIRE.

HOLYWELL, Holywell, except the sub-districts of Mold and Flint (see *Mold*).—MOLD, The sub-districts of Mold and Flint, in Holywell, consisting of the parishes of Mold, Cilcen, Flint, Halkin, Northop, and the chapelry of Nerquis.

GLAMORGANSHIRE.

BRIDGEND, Bridgend and Cowbridge.—CARDIFF, Cardiff.—MERTHYR TIDFIL, Merthyr.—NEATH, Neath.—SWANSEA, Swansea.

MERIONETHSHIRE.

BALA, Bala.—CORWEN, Corwen, except the parish of Llangollen (see *Ruabon*).—DOLGELLY, Dolgelly.

MONTGOMERYSHIRE.

LLANFYLLIN, Llanfyllin, except the parishes of Llanfaircaereinion and Llangyniew (see *Welchpool*).—LLANIDLOES, the sub-districts of Upper and Lower Llanidloes in Newtown and Llanidloes, consisting of the parishes of Llanidloes, Llangirrigg, and Tref Eglwys.—MACHYNLLETH, Machynlleth.—NEWTOWN, Newtown and Llanidloes, except the sub-districts of Upper and Lower Llanidloes (see *Llanidloes*). The parishes of Llandyssil and Llanmerewig.—WELCHPOOL, Montgomery, except the parishes of Llandyssil, Llanmerewig, and Church Stoke and township of Aston (see *Newtown* and *Bishopscastle*). The parishes of Llanfaircaereinion and Llangyniew.

PEMBROKESHIRE.

HAVERFORDWEST, Haverfordwest.—NARBERTH, Narberth.—PEMBROKE, Pembroke.

RADNOR.

PRESTEIGNE, Knighton. The sub-district of Presteigne and Kington, consisting of the parishes of Byton, Cascob, Upper Kinsham, Knill, Lingen, Norton, Pilleth, Presteigne, and Whitton.—RHAIDAR, Rhaiadr.

INDEX.

A.

Abode, place of, service of summons, &c. at, 30. *Ap.* 204.
Absence, unavoidable, of clerk, in what cases deputy appointed, 10. *Ap.* 155.
Absence, unavoidable, of judge, in what cases deputy appointed, 8. *Ap.* 153.
Absolute bill of sale, goods assigned by, taken in execution, 97.
Acceptance of money paid into court, 36. *Ap.* 205.
Acceptor of bill of exchange, summons against, *form of*, 25; evidence in action against, 58, 59.
Accounts to be kept by clerk, 10, 17; in what form, 2; and by whom audited, 10. *Ap.* 155, 162, 163.
Accounts of fees received, by whom kept, 17. *Ap.* 162.
Accounts of fines levied, by whom kept, 18. *Ap.* 162.
Accounts of money paid to the general fund, by whom kept, 19. *Ap.* 165.
Accounts by officer, of money levied by him, 16. *Ap.* 186.
Accounts to be kept by treasurer, 18; by whom audited, 18. *Ap.* 162, 163.
Accounts, how and by whom audited, 17. *Ap.* 155, 162, 163.
Account, action for balance of, what, within the jurisdiction of the court, 2. *Ap.* 168.
Account stated, summons in action on, *form of*, 26; evidence, 59.
Act of bankruptcy, notice of, its effect on an execution, 94, 95.
Action of account, summons in, 25.
Action, cause of, must be inserted in summons, 23, 25. *Ap.* 169.
Action of assumpsit, summons in, 25.
Action on bills, notes, securities, &c., by plaintiff, seized under an execution, 91. *Ap.* 178.
Actions of which the court has jurisdiction, 2; all actions personal, except actions for libel or slander, 2, 3, for malicious prosecution, 3, for criminal conversation, 3, for breach of promise of marriage, 3, for seduction, 3, and actions where the title to corporeal or incorporeal property shall be in question, 3, or in which the title to any toll, fair, market or franchise shall come in question, 3, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, 3. *Ap.* 168.
Action to be commenced, in what district, 4. *Ap.* 169.

Action on bond given, on staying warrant of possession, 133. *Ap.* 190.
Action for breach of promise of marriage, not within the jurisdiction of the court, 3. *Ap.* 168.
Action on the case, for irregular distress, 136. *Ap.* 193.
Action for contribution, in what cases, 4. *Ap.* 171.
Action for criminal conversation, not within the jurisdiction of the court, 3. *Ap.* 168.
Actions by or against executors or administrators, 116: in what cases, 116, 117; upon a judgment for or against the testator or intestate, 116. *Warrant of execution against an executor or administrator*, 117; where *plene administravit* is pleaded, 118; judgment *quando*, &c. how enforced, 119. Proceedings on a devastavit, 119, *summons*, 119; *judgment*, 120; execution, 120. *Ap.* 170, 206, 207.
Action against a judge of the court, not, for anything done in actions for recovery of small tenements, 132. *Ap.* 189.
Action for libel or slander, not within jurisdiction of the court, 3. *Ap.* 168.
Action for malicious prosecution, not within jurisdiction of the court, 3. *Ap.* 168.
Actions against officers of the court, 15:—venue, limitation, notice of action, tender of amends, payment of money into court, 15. *Ap.* 193.
Action against party suing out warrant of possession, 132. *Ap.* 188, 190.
Action for seduction, not within the jurisdiction of the court, 3. *Ap.* 168.
Action in superior courts, for a cause of action within the jurisdiction of county court,—costs, 5, 6. *Ap.* 190.
Action in superior courts, respecting goods taken under an execution of this court, when stayed, 101. *Ap.* 187.
Adjournment of cause, 77:—to allow of a delivery of particulars, 22, 55; to allow of a delivery of notice of defence, 32; *form of the order for adjournment*, 78. *Ap.* 175, 203, 205
Adjudication, in ordinary cases, 78. *Ap.* 172; upon an interpleader summons, 103. *Ap.* 187; in a conviction for a penalty, 135. *Ap.* 192.
Administrators, may sue and be sued in these courts, 4, 116; the like, upon a judgment for or against their intestate, 116; judgment in actions by them, 116, 117; in actions against them, 116, 117; *form of execution against them*, 117; judgment where *plene administravit* is pleaded, 118; judgment *quando*, &c., how enforced, 119. Proceedings on a *devastavit*, 119; summons, 119: *form of judgment*, 120; *form of execution*, 120. *Ap.* 170, 206, 207.
Admission of cause of action by defendant, judgment thereon, 75. *Ap.* 174.

Affidavit of service of summons, in what cases, 31. *Ap.* 169, *form of it*, 31.
Affirmation of Quakers, &c., in what cases, 44; false affirmation, perjury, 44. *Ap.* 175.
Affixing summons to appear, on defendant's door, in what cases, 30. *Ap.* 204.
Affixing summons for holding over, on tenant's door, in what cases, 126. *Ap.* 189.
Agent for a party in a cause in these courts,—attorney, if judge, shall not be, 7. *Ap.* 149; clerk shall not be, 10. *Ap.* 156; high bailiff shall not be, 12. *Ap.* 156; treasurer shall not be, 14. *Ap.* 156.
Agreement, how proved, 39.
Allowance to witnesses, 46, 83.
Alteration of districts, 2. *Ap.* 146, 147; of the orders of the court, 114. *Ap.* 38; of the rules or forms of the court, 2. *Ap.* 180; of the time of holding the court, 7. *Ap.* 168.
Ambassador or his servants, no execution against, 86.
Ancient county court, distinguished from the new courts, 1. *Ap.* 147.
Answer, not making, by party summoned for fraud, punishment, 107. *Ap.* 179.
Apothecary, *summons* at the suit of, 26; evidence, 65.
Appearance of defendant, failure of, at the hearing, effect of, 76. *Ap.* 174; the like, where there has not been personal service, effect of, 30. *Ap.* 204.
Appearance of defendant, summoned for fraud, proceedings thereon, 106, 107. *Ap.* 179; not appearing, commitment, 105. *Ap.* 179, *form of the order of commitment*, 106, 107, 108, *and of the warrant*, 109, 110, 111.
Appearance of plaintiff, failure of, at the hearing, effect of, 75. *Ap.* 174; the like after payment of money into court, 36. *Ap.* 205.
Appearance of tenant to summons for holding over, failure of, proceedings thereon, 127. *Ap.* 188.
Application of fine on witness for non-attendance, 45. *Ap.* 176.
Application of the general fund, 19. *Ap.* 165.
Application to set aside execution, money retained in court until, 100. *Ap.* 206.
Appointment,—of clerk, 9. *Ap.* 154; of high bailiff and bailiffs, 12. *Ap.* 156; of the judge, 6. *Ap.* 148; of treasurer, 14, *Ap.* 154.
Appraisers, appointment of, 98. *Ap.* 182; dismissal of, 98. *Ap.* 182; to sell goods taken in execution, 98. *Ap.* 182; what poundage and commission they are entitled to, 98. *Ap.* 182.
Arbitration, causes may be referred to, 76; *form of order to refer*, 77; award to be entered as a judgment of the

court, 77; judge on application may set it aside, 77. *Ap.* 173.
Arguments by counsel, not without leave of the court, 17. *Ap.* 177.
Arrest of person guilty of a contempt, 9. *Ap.* 185; of party committed for fraud, 109. *Ap.* 180.
Assault, *summons* in action for, 27; evidence, 69, 70; defences, 70.
Assaulting officers, penalty, 15, 97. *Ap.* 185.
Assets, *quando acciderint*, judgment of, 118. *Ap.* 206, 207; how enforced, 119. *Ap.* 207.
Assignment of goods by bill of sale, execution when affected by, when not, 196, 197.
Assistant clerks, 10. *Ap.* 12; their duties, 10. *Ap.* 208.
Assumpsit, jurisdiction of the court in, 2, 25; *summons* in, 25; evidence in, 56, 57; defence in, 58.
Attendance of judge, 7.
Attendance of witness, how enforced, 44. *Ap.* 175; *summons*, 44; penalty for disobeying, 45. *Ap.* 176; *form of order for fine*, 45.
Attorney, when judge, not to act as attorney after what time, 6, 7. *Ap.* 148.
Attorney,—clerk, high bailiff, judge, treasurer, or other officer of the court, not to act as, in causes in these courts, 10, 12, 7, 14, 16. *Ap.* 148, 156.
Attorney, *summons* at the suit of, 26; evidence in action on bill, 65; defence, 65.
Attornies, in what cases allowed to practise in new county court, 16; what fees allowed them, and in what cases, 17. *Ap.* 177.
Auditing accounts, 17: of the clerk, 17; of the treasurer, 18. *Ap.* 155, 162, 163.
Award, where cause referred to arbitration, entered as a judgment of the court, 77; the judge may set it aside, 77. *Ap.* 173.

B.

Bailiff. See "*High Bailiff.*"
Bailiffs, appointed by the high bailiff, 12. *Ap.* 156; how and by whom paid, 14. *Ap.* 157, 161; how punished for extortion, &c. 15, 16. *Ap.* 186. Their duty in serving summonses to appear, 29, 30. *Ap.* 204, 169; in serving summonses on witnesses, 45. *Ap.* 175; in levying execution upon goods, &c. 87, 90. *Ap.* 178; in paying money received by them into court, 100, 101. *Ap.* 209; in conveying party committed for fraud to prison, 109. *Ap.* 182; in arresting persons for assaulting officers, rescuing goods,

&c., 15, 97, 98. *Ap.* 185. Punishment for insulting them, whilst attending the court, 9. *Ap.* 185; for assaulting them, 97. *Ap.* 185. Payment or tender to them of the amount of execution, 90. *Ap.* 184. Their indemnity, for delivering possession of tenements under warrant, 182. *Ap.* 189.

Balance of accounts, action for, may be brought in new county court, 2. *Ap.* 168.

Balance in the hands of treasurer, to be paid into Bank, 18. *Ap.* 162.

Bank of England notes, and the notes of other banks, may be taken in execution, 90, 91. *Ap.* 178.

Bankrupt, goods of, cannot be taken in execution, in what cases, 94.

Bankrupts, commissions and flats of, adjudications, &c., how proved, 38.

Bankruptcy, notice of, its effect on an execution, 94, 95.

Bankruptcy, order of court of, no protection for a person committed by the new county court for fraud, 112. *Ap.* 181.

Bankruptcy, defence of, 34. *Ap.* 173; notice of, when to be given, 34. *Ap.* 205; *form of the notice*, 34, 35.

Baptism, copy of register of, how proved, 38.

Barracks, service of summons on soldier or marine in, 30. *Ap.* 204.

Barrister, in what cases fee to, allowed in new county court, 16, 17. *Ap.* 177.

Barrister, judge not to practise as, within his district, 8. *Ap.* 152.

Barrister, judge to be, and of what standing, 6. *Ap.* 148.

Bath, judge of the court of, may practise in chambers as a conveyancer, 8. *Ap.* 152; who to be judge, 7. *Ap.* 149.

Battery, *summons* in action for, 27; evidence, 69; defence, 70.

Bedding, when not to be taken in execution, 90, 91. *Ap.* 178.

Bequest, action to try the validity of, not within the jurisdiction of the new county court, 3. *Ap.* 169.

Bill of exchange, *summons* in action on, against the acceptor, 25; against the indorser, 25; against the drawer, 25. Evidence in the action, 58, 59; bill, how proved, 39; defence, 60.

Bills of exchange may be taken in execution, 90, 91. *Ap.* 178; in what cases creditors may sue upon them, 91. *Ap.* 179.

Board of guardians, judge (if an attorney) not to be clerk to, 7.

Bond, *summons* in debt on, 25; evidence, 66; defence, 67.

Bonds may be taken in execution, 90, 91. *Ap.* 178.

Bond, given, on warrant of possession being stayed, 133. *Ap.* 190; *form of it*, 133.

Bond given on removal of plaint to a superior court, *form of it* 115.

Books, to be kept by the clerk of the court, 6, 10. *Ap.* 174, 208.
Books of tradesmen, notice to produce, effect of, 41.
Borough courts of record, have a concurrent jurisdiction with the new county court, 6.
Borrowing money, power of, given to treasurer, to pay expenses, 2. *Ap.* 165.
Breach of promise of marriage, action for, not within the jurisdiction of the new county court, 3. *Ap.* 169.
Breach of trust, commitment, where debt incurred by, 107. *Ap.* 179.
Breaking door, to execute a warrant of execution, when not allowed, 91.
Bristol, who to be judge of the court of, 7. *Ap.* 149; judge may practise in chambers as a conveyancer, 8. *Ap.* 152.
Broker, appointment of, 98. *Ap.* 182; dismissal of, 98. *Ap.* 182; to sell goods taken in execution, 98. *Ap.* 182; what poundage and commission he is entitled to, 98. *Ap.* 182.
Burial, copy of register of, how proved, 38.
Business, good-will of, *summons* in action on the sale of, 26.
Business, place of, service of summons, &c. at, 30. *Ap.* 204.

C.

Cambridge University, Act not to affect the privileges of the chancellor, &c. of, 4. *Ap.* 193.
Carriage of goods, *summons* in action for, 26.
Case, summons in action on, 25; *for negligence*, 27; *for a nuisance*, 27; *for deceit*, 28; evidence, 70, 71; defence, 71.
Case, action on, for irregularity in obtaining warrant of possession, 132. *Ap.* 191; for irregularity in distress for a penalty, 136. *Ap.* 193.
Cattle, *summons* in action for depasturing, 26; in replevin for taking, 28.
Cause of action, particulars of, to be delivered when plaint entered, *Ap.* 203; *form of them*, 22.
Cause of action, how stated in the summons, 25; *forms*, 25—28.
Cause, in what cases struck out, 75. *Ap.* 174.
Certificate of bankrupt, defence of, 34. *Ap.* 205; *form of the notice*, 34, 35; certificate, how proved, 38.
Certificate of court of bankruptcy or insolvency, not to prevent commitment for fraud, 112. *Ap.* 181.
Certificate of judge of superior court, to entitle plaintiff to costs, in an action which might have been brought in new county court, 5. *Ap.* 191; the like in actions there against the clerk or officers of the new county court, 15. *Ap.* 193.

Certificate of judge, in trespass for suing out warrant of possession, 133. *Ap.* 189, 190.
Certificate of payment, to entitle party to his discharge from commitment, 113. *Ap.* 184; *form of it*, 113.
Certiorari, to remove plaint in replevin, 124.
Challenge of jurors, 73.
Chancellor, lord, to appoint the judges of the new county courts, 6. *Ap.* 148; may remove them, 7. *Ap.* 153; in what cases to appoint deputy, 8. *Ap.* 153.
Chancellor of duchy of Lancaster to appoint judge within the duchy, 7. *Ap.* 152; may remove him, 7. *Ap.* 153; in what cases to appoint deputy, 8. *Ap.* 153.
Chancellor or vice-chancellors of the Universities, their privileges not affected by this Act, 4. *Ap.* 193.
Chancery, court of, may authorize new county courts to perform certain duties, 6. *Ap.* 153.
Charging property, with intent to defraud creditors, commitment for, 107. *Ap.* 180.
Cheque, evidence in action on, 60.
Cheques may be taken in execution, 90, 91. *Ap.* 178; in what cases creditors may sue upon them, 91. *Ap.* 179.
Christmas-day, summons cannot be served on, 31. *Ap.* 209; entry under warrant of possession, not to be made on, 131. *Ap.* 188.
Claim to goods taken in execution, or by landlord for rent, 98, 101. *Ap.* 187, *and form of it*, 99; action in respect thereof stayed, 101. *Ap.* 187; *summons* for interpleader *to plaintiff*, 102, *to claimant*, 102; claimant to be plaintiff, and to deliver particulars of his claim, 103. *Ap.* 208; judgment, costs, 103. *Ap.* 187; *form of the particulars*, 103; *form of the order*, 103.
Clerk of the court, 9: his appointment, 9. *Ap.* 154; his duties, 10. *Ap.* 155, 208, 209; deputy, 10. *Ap.* 155; his fees or salary, 11. *Ap.* 154, 159, 161; security, 11. *Ap.* 158; not to act as attorney in the court, 16. *Ap.* 156; how punished for extortion, &c. 15, 16. *Ap.* 186; when and how to account, 17. *Ap.* 155, 163, 165. Tender to him of debt and costs, its effect in staying execution, 90. *Ap.* 184. His duty with respect to a warrant of execution or commitment sent from another district, 100, 101, 112. *Ap.* 181. No action against him for issuing warrant of possession, 132. *Ap.* 189. Insulting him during his attendance in court, punishment, 9. *Ap.* 185. High bailiff or treasurer not to act as clerk, 12, 14. *Ap.* 155.
Clerks of courts already established, provisions as to. *Ap.* 157.
Clerk of the peace, or clerk to magistrates, or clerk to board of guardians, &c.—judge (if an attorney) not to be, 7. *Ap.* 149.

Clerk's notice of jury being demanded, 73. *Ap.* 171.
Collusion, judgment allowed to go by default by, when not valid against assignees of a bankrupt, 96.
Common pleas at Lancaster, how far it cannot take cognizance of cases within the jurisdiction of the new county courts, 6.
Commission of bankruptcy, how proved, 38.
Commissioners, judge (if attorney) not to be clerk to, 7. *Ap.* 149.
Commitment for contempt, 9. *Ap.* 185.
Commitment for fraud, 104: in what cases, 107. *Ap.* 179; summons and service, 104, *form of the summons*, 104, service thereof, 105. *Ap.* 179; appearance and examination, 105. *Ap.* 179; examination of witnesses, 105. *Ap.* 179; party not appearing, committed, 105. *Ap.* 179; party appearing, in what cases committed, 106. *Ap.* 179. The like at the trial, 108. *Ap.* 180. Order of commitment, 107. *Ap.* 180, *and forms thereof*, 106, 107, 108. Warrant of commitment, 109. *Ap.* 180.; *form for not appearing*, 109, *form after judgment*, 110, *form upon examination at the trial*, 111. Warrant how executed, 109. *Ap.* 180; how executed out of the district, 112. *Ap.* 181; how returned, 113, 13. *Ap.* 209.
Commitment for penalties, 136. *Ap.* 191.
Common gaol, committal to, for fraud, 107. *Ap.* 179.
Competency of witnesses, 42.
Concealing property, with intent to defraud creditors, commitment for, 107. *Ap.* 180.
Concurrent jurisdiction with the new county courts, what courts have, 5. *Ap.* 190, 191.
Condition of replevin bond, 123. *Ap.* 187; of bond, on staying the execution of a warrant of possession, 133. *Ap.* 190.
Consent of defendant to judgment, on terms, 74; *form of it*, 75.
Consideration in assumpsit, 56.
Consolidated fund, in what cases salaries to be paid out of, 14. *Ap.* 161.
Consolidation of districts, 2. *Ap.* 146.
Constables to assist in executing a warrant of execution, 91, 101. *Ap.* 178, 182; or warrant of commitment, 109, 113. *Ap.* 181, 182.
Contempt of court, &c., how punished, 9. *Ap.* 184.
Contracts, actions on, what, 25.
Contracting debt, manner of, inquirable upon summons after judgment, 107. *Ap.* 179; or at the trial, 108. *Ap.* 180; in what cases commitment, 106, 107. *Ap.* 180.
Contribution, where one of several, jointly liable, is sued, 4, 29. *Ap.* 171.
Conveyance of party to prison, under a warrant of commitment, 112. *Ap.* 182.
Conviction for crime, does not render the party an incompetent witness, 43.

Conviction for penalties, 135. *Ap.* 192; *form of it*, 135. *Ap.* 192.
Conviction by magistrates, how proved, 38.
Copies, examined or office, in what cases evidence, 39.
Copy of entry in clerk's book, signed, sealed and certified, evidence, 115. *Ap.* 184.
Copy of summons, delivering a paper purporting to be, but knowing the same to be false, felony, 29. *Ap.* 168.
Cornwall, courts of the stannaries in, not affected by this Act, 6. *Ap.* 194.
Corporation, clerk to, judge (if an attorney) cannot be, 7. *Ap.* 149.
Corporeal or incorporeal hereditaments, actions respecting the title to, not within the jurisdiction of the new county courts, 3. *Ap.* 168; but actions for the recovery of land, on the determination of the tenancy, are, 3. *Ap.* 188.
Costs, generally, 82. *Ap.* 176; for plaintiff, in what cases, 82. *Ap.* 176; for defendant, in what cases, 75, 80, 82. *Ap.* 174, *and form of order for them*, 75, 79, 81; order to pay them by instalments, &c. 78, *Ap.* 177, *and form of it*, 80; *form of warrant of execution for costs*, 89.
Costs, in actions against officers of the court, 15. *Ap.* 193.
Costs, on payment of money into court, 37. *Ap.* 175.
Costs of jury, when costs in the cause, 73. *Ap.* 171.
Costs, taxation of, 83. *Ap.* 208.
Costs in the superior courts, in actions for causes cognizable by the new county court, 5. *Ap.* 191.
Costs of execution, when and how levied, 87. *Ap.* 178; to be indorsed on warrant, 87. *Ap.* 184.
Costs upon interpleader summons, 103. *Ap.* 187.
Costs upon a warrant of commitment, are costs in the cause, 113. *Ap.* 179.
Costs, in actions against executors or administrators, 116, 118. *Ap.* 207.
Costs, *warrant* for, upon obtaining a warrant of possession, 131.
Costs in action against landlord for an irregularity in obtaining a warrant of possession, 133. *Ap.* 189.
Counsel, when employed in the new county courts, 16; what fees allowed, 17. *Ap.* 177.
County court, distinction between the ancient and the new county courts, 1.
County palatine of Lancaster or Durham, courts of, how affected by this statute, 6.
Court of bankruptcy or insolvency—protection, order or certificate of, not to prevent party from being committed for fraud, 112. *Ap.* 181.
Court of chancery may require certain duties to be performed by these new county courts, 6. *Ap.* 153.
Court of common pleas at Lancaster, jurisdiction of, how affected by this statute, 6.

Courts of equity, proceedings in, how proved, 38.
Court-houses, by whom provided, &c., 2. *Ap.* 164, 166; the clerk shall have charge of them, may appoint and dismiss the servants, &c. *Ap.* 167.
Courts, local, and their jurisdiction, 1; when to be holden, and notice thereof, 7. *Ap.* 168.
Court of pleas at Durham, jurisdiction of, how affected by this statute, 6.
Court of record in boroughs, not affected by this statute, 6.
Courts of the stannaries in Cornwall, not affected by this statute, 6. *Ap.* 193.
Courts, superior, in what cases they have concurrent jurisdiction with the new county courts, 5. *Ap.* 190; in actions in them cognizable by the county courts alone, what costs, 5. *Ap.* 191.
Courts in the universities, not affected by this statute, 4. *Ap.* 193.
Court, persons present in, may be compelled to give evidence, 45. *Ap.* 176.
Court, money paid into, 35. *Ap.* 175; when, 35. *Ap.* 205; notice thereof, 35. *Ap.* 175; *form of the notice where the whole sum claimed is paid in*, 36, *where part only is paid*, 36. Proceedings after it, 36. *Ap.* 175, 205; *notice of plaintiff's acceptance of it in satisfaction*, 37.
Court, money to be paid into, which is ordered to be paid at a particular time or by instalments, 80. *Ap.* 177.
Court, money paid into, under an execution, 100, 101. *Ap.* 208; when retained upon notice, 100. *Ap.* 206.
Court, money paid into, in actions against officers of the court, 15. *Ap.* 193.
Covenant, summons in action of, 25; *form of it*, 26; evidence, 67, 68; defence, 68.
Coverture, defence of, and notice thereof, 34. *Ap.* 173; *form of the notice*, 34, 35; when to be given, 34. *Ap.* 205.
Credit, obtaining, under false pretences or by fraud,—commitment for, 107. *Ap.* 179.
Credit of a witness, how impeached, 52.
Criminal conversation, action for, not within the jurisdiction of the county court, 3. *Ap.* 169.
Cross-judgments, how execution to be in cases of, 82, 87. *Ap.* 177.
Cross-examination of witness, how, and for what purpose, 51.

D.

Damage arising from neglect, connivance, or omission of bailiff, remedy for, 13. *Ap.* 186; arising from the extortion or misconduct of officers, remedy for, 16. *Ap.* 186.

Damages, refusing to pay, when defendant has the ability, commitment, 107. *Ap.* 180; manner of incurring them, how and when inquired into, 107. *Ap.* 179.
Damage feasant, replevin for, to be brought in new county court, 122. *Ap.* 187.
Date of summons, on day plaint is entered, 28. *Ap.* 204.
Debt, summons in action of, 25: *forms, in debt on simple contract*, 26, *in debt on bond*, 26, *in debt on annuity deed*, 26.
Debts, cannot be taken under a warrant of execution, 92. Evidence in debt on simple contract, 61; in debt on bond, 66; in debt on other deed, 67.
Debt, circumstances under which it was contracted, examined into upon summons, 107. *Ap.* 179; or at the trial, 108. *Ap.* 180.
Debt, contracting, without expectation of being able to pay it, or refusing to pay, when the defendant has the ability to do so, commitment, 101. *Ap.* 180.
Deceit, *summons* in action on the case for, 28.
Deed, *summons* in debt on, 26; deed, how proved, 38; deed enrolled, how proved, 39.
Default, judgment by, its effect on an execution in case of bankruptcy of the defendant, 95.
Default or fraud, second commitment for, 114. *Ap.* 181.
Defence, special, 32, 34: set-off, infancy, coverture, statute of limitations, discharge as bankrupt or insolvent debtor, 32; notice thereof must be given to the clerk, 34, 32, and by the clerk to the plaintiff, 32, 34, 35. *Ap.* 173; when, 34, 32. *Ap.* 205; *form of the former notice*, 34, *and of the latter*, 35.
Defences, in the different actions, 55, &c.: in assumpsit, 58; in actions on bills of exchange and promissory notes, 60; in debt on simple contract, for goods sold and delivered, 62, goods bargained and sold, 62, work and labour, 62, on attorney's bill, 65, for use and occupation, 66;—in debt on bond, 67, or other deed, 67;—in covenant, 68; detinue, 68;—in trespass to land, 69, to personal property, 69, to the person, 70;—in action on the case, 71;—in trover, 72.
Defendant, when entitled to costs in actions in superior courts for causes cognizable in new county court, 5. *Ap.* 191.
Defendant, judgment for, 75: on a nonsuit, 80, or on a finding, 80. *Ap.* 174; *form of order thereon*, 75.
Defrauding creditors by assignment, &c. of property, commitment for, 107. *Ap.* 179.
Delay of execution, none, by writ of error or supersedeas thereon, 115. *Ap.* 183.
Delivery of possession of tenement, warrant for, 129; *form of it*, 130.
Delivery of property, with intent to defraud creditors, 65. *Ap.* 179.

Demand, particulars of, to be produced on entering plaint, 22. *Ap.* 203; *form of them*, 22; a copy to be served with the summons, 28. *Ap.* 204; no evidence to be given of anything out of them, 55.
Depasturing cattle, *summons* in action for, 26.
Deputy of judge, when and by whom appointed, 8. *Ap.* 153; of clerk, 10. *Ap.* 155.
Derivative title, when to be proved, upon obtaining a warrant of possession, 128. *Ap.* 188.
Description, inaccurate, of person in plaint, in what case it shall not hurt, 22, 28. *Ap.* 169.
Detainer in custody, until return of distress, in proceedings for penalties, 136. *Ap.* 191.
Determination of causes, by the judge, 7, 72. *Ap.* 171, 168.
Determination of term or interest of tenant, proceedings thereupon, to obtain possession of the demised tenement, 125. *Ap.* 188, 189.
Detinue, summons in action of, 25; *form of it*, 26; evidence, 68; defence, 68.
Devastavit, proceedings on, 119. *Ap.* 207; *summons*, 119; hearing, 119; judgment, 119. *Ap.* 207; *form of judgment against the executor, &c.*, 120, *and warrant of execution thereon*, 120.
Devise, how proved, 39.
Devise, action to try the validity of, not within the jurisdiction of the new county courts, 3. *Ap.* 169.
Discharge as a bankrupt or insolvent, defence of, 34; notice of it to be given, 34. *Ap.* 173; when, 34. *Ap.* 205; *and form of the notice*, 34, 35; when not to prevent commitment for fraud, 112. *Ap.* 181.
Discharge of party committed, on payment of debt, &c., 113. *Ap.* 184.
Discontinuance of action, after payment of money into court, 36. *Ap.* 205.
Dismissal, in what cases, of clerk, 9. *Ap.* 154; of high bailiff and bailiffs, 12. *Ap.* 156; of brokers and appraisers, 98. *Ap.* 182.
Disobeying summons by witness, fine, 45. *Ap.* 176; *form of the order for the fine*, 45.
Disposal of property, examination into, upon summons, 107. *Ap.* 179; or at the trial, 108. *Ap.* 180.
Distributive share of intestate's property, action for, within the jurisdiction of the new county courts, 3, 4. *Ap.* 170.
Districts for the new county courts, 1. *Ap.* 210; may be altered, increased, or consolidated, 2. *Ap.* 146; within what district action to be brought, 4, 28. *Ap.* 171; *form of leave to sue in a district in which the defendant does not reside*, 28; within what district action to be brought for recovery of possession of tenements, 126, 127; how summons served out of it, 31. *Ap.* 169; execution out of the

district, 100. *Ap.* 181; warrant of commitment out of the district, 112. *Ap.* 181.
Distress for penalties, 135. *Ap.* 191, 193.
Distress for rent, under an execution, 98. *Ap.* 183; high bailiff's fees thereon, 100. *Ap.* 183.
Distress for rent, replevin upon, to be brought in new county court, 122. *Ap.* 187.
Division of cause of action, to bring two or more actions in new county court, not allowed, 3. *Ap.* 170.
Documentary evidence, 37:—proof of documents, 37; in what cases by copies, 39; in what cases by secondary evidence, 39.
Dog, accustomed to bite, *summons* in action for keeping, 27.
Door, breaking open, to execute a warrant of execution, in what cases not allowed, 91.
Drawer of bill of exchange, summons in action against, 25; evidence, 58, 59; defence, 60.
Drawer of a cheque, evidence in action against, 60.
Driving, action for injury by negligence in, *summons*, 27.
Dumb persons may be witnesses, persons deaf, dumb, and blind, cannot, 43.
Durham, court of pleas at, its jurisdiction how affected by this statute, 6.
Duties of judge, 7. *Ap.* 168, 152, 153; of clerk, 10. *Ap.* 155, 208; of high bailiff, 12. *Ap.* 157, 208, 209.

E.

Ecclesall, manor, provisions as to the court of, 7. *Ap.* 152.
Ecclesiastical courts, proceedings in, how proved, 38.
Ejectment, not within the jurisdiction of the new county courts, 3. *Ap.* 168.
Enrolment of proceedings in bankruptcy, when necessary, 38.
Entry into a house, to levy under a warrant of execution, 91; the like, into the house of a third person, in what cases, 91.
Entries in the books of the clerk, what required, 114, 115. *Ap.* 184; in what cases copies of them evidence, 115. *Ap.* 184; forms of them appended to the rules of court by the judges, 2.
Entry, to execute a warrant of possession, 131. *Ap.* 188; how, 131.
Equity, courts of, proceedings in, how proved, 38.
Equity, matters in, what, to be executed by the new county courts, 6. *Ap.* 153.
Error, writ of, no stay of judgment or execution in the new county courts, 87, 115. *Ap.* 183.

Evidence, 37 : proof of written documents, 37 ; in what cases by copies, 39 ; in what cases by secondary evidence, 39 ; notice to produce, in what cases, 40, *and form of it*, 41.

Evidence in the different actions, 55 ; assumpsit, 56, evidence for plaintiff, 57, defence, 58 ;—actions upon bills of exchange, promissory notes, and cheques on bankers, 58, evidence for plaintiff, 58, 59, defence, 60 ;—debt on simple contract, 61, for goods sold and delivered, 56, goods bargained and sold, 62, work and labour, 62, money lent, 63, money paid, 63, money had and received, 63, account stated, 64, interest, 64, work and labour as an attorney, 65, medicines by an apothecary, 65, use and occupation, 65, and in other cases, 66.—Debt on bond, 66, debt on other deed, 67.—Covenant, 67, evidence for plaintiff, 68, defence, 68 ;—Detinue, 68, evidence for plaintiff, 68, defence, 68.—Trespass to land, 68, evidence for plaintiff, 68, defence, 69 ;—trespass to personal property, 69, evidence for plaintiff, 69, defence, 69 ;—trespass to the person, for assault, battery, or false imprisonment, evidence, 69, 70, defence, 70.—Action on the case, 70, evidence for the plaintiff, 70, defence, 71.—Action of trover, 71, evidence for plaintiff, 72, defence, 72.

Evidence, in what cases copies of entries in the clerk's books to be, 115. *Ap.* 184.

Evidence, refusal to give, by a person present in court, fine, 45 ; by a witness summoned, 45. *Ap.* 176 ; *form of order for fine*, 45.

Evidence, secondary, in what cases admitted, 39.

Exaction by officers, remedy for, 16. *Ap.* 186.

Examined copies, in what cases evidence, 39.

Examination of a party for fraud, after judgment, 106. *Ap.* 179 ; or at the trial, 108. *Ap.* 180 ; examination of witnesses to the same effect, 105. *Ap.* 179.

Examination of witnesses, 46 : upon the *voire dire*, 46 ; in chief, 47. Cross-examination, 51. Re-examination, 54.

Excepted articles, in warrant of execution, which are not to be taken, 90, 91.

Execution, 85 :

1. Execution within the district, 85 ; in what cases, 85. *Ap.* 178 ; where the money is payable by instalments, 86. *Ap.* 178 ; not by or against a person who is not a party to the suit, 86. *Ap.* 178 ; nor against a foreign ambassador or his domestics, 86 ; by whom issued, 10. *Ap.* 155. Order to suspend or stay the execution, 86. *Ap.* 182 ; *form of it*, 86 ; but not to be stayed by writ of error, 87 ; *Ap.* 183. For what amount execution shall be sued out, 87 ; how where the debt, &c. is payable by instalments, 87. *Ap.* 178 ; how, in the case of cross-judgments, 87, 82. *Ap.* 177. When and how issued, 87. *Ap.* 178 ; how indorsed, 87.

Ap. 184. *Form of a warrant of execution at the suit of plaintiff*, 88, *at the suit of defendant*, 89. Within what time to be executed, 90. How executed, 90. What goods, &c. may be taken under it,—goods and chattels (except wearing apparel, bedding, tools, &c.) bank notes, cheques, bills, promissory notes, bonds, specialties or securities for money, 91. *Ap.* 182, 183; fixtures, 92. Whose goods, 93,—goods of a bankrupt, 94, of an insolvent, 96, of partner, 96, goods assigned by bill of sale, 96. Rescue of goods taken, 97. *Ap.* 185. Goods how sold, 98; when, 98. *Ap.* 182; and in the meantime where to be kept, 98. *Ap.* 182; to be sold by broker or appraiser, 98. *Ap.* 182; rent, if claimed, to be distrained for, 98. *Ap.* 183; *and form of landlord's claim for it*, 99. Warrant of execution returned, and money levied paid into court, 100, 13. *Ap.* 209; and if application to set aside execution, money retained, 100. *Ap.* 206.

2. Execution out of the district, 100: how and by whom, 100, *Ap.* 181; warrant returned, and money paid into court, 101. *Ap.* 181, 209.

3. Interpleader, 101; summons, how and in what cases, 101. *Ap.* 187, and action (if any) thereupon stayed, 101. *Ap.* 187; *form of the summons to the plaintiff*, 102, *to the claimant*, 102; how served, 103. *Ap.* 208; particulars of claim to be given, 103. *Ap.* 208, *and form of them*, 103; claimant to be plaintiff, execution creditor defendant, 103. *Ap.* 208. Adjudication thereon, 103. *Ap.* 187; *and form of the order*, 103.

Execution against one of several jointly liable, action after for contribution, 29. *Ap.* 171.

Execution for costs, 75, 80. *Ap.* 176; *form of it*, 89.

Execution, in the case of cross-judgments, 82, 87. *Ap.* 177.

Execution superseded, on payment of debt and costs, 90. *Ap.* 184.

Execution set aside, in what cases, 83. *Ap.* 174.

Execution, not to be stayed by writ of error, 87. *Ap.* 183.

Execution, warrant of, against an executor or administrator, 116; *form of it*, 117; how where *plene administravit* is pleaded, 118; *form of warrant of execution on a devastavit*, 120.

Execution in action for the recovery of a tenement on determination of the tenancy, 129, *Ap.* 188, 189; *form of warrant to deliver possession*, 130; how executed, 131; how and in what cases stayed, 133. *Ap.* 189; *and form of bond given*, 133; *form of warrant of execution for costs*, 131.

Execution, neglect, connivance, or omission of bailiff in levying, how punished, 13. *Ap.* 186.

Execution, fees on, to be paid into court, and afterwards to high bailiff, 11. *Ap.* 159.

Executions, entries of, to be made in the books of the clerk, and copies to be evidence, 114. *Ap.* 184.
Execution of warrant of commitment, how, 109. *Ap.* 180; how, out of the district, 112. *Ap.* 181; not to prevent plaintiff from afterwards taking out execution against the goods, 114. *Ap.* 181.
Executors may sue and be sued in the new county court, 4. *Ap.* 170; but execution cannot be sued out by or against them on a judgment by or against their testator, 116. *Ap.* 206. Also, goods of the testator in the hands of his executor, cannot be taken in execution for the debt of the latter, 93, 94.
Executors, actions by and against them, 116:—in what cases, 116. *Ap.* 170; upon a judgment for or against the testator, 116. *Ap.* 206; proceedings the same as in ordinary cases, 116. *Ap.* 170; judgment against the executor in ordinary cases, 117. *Ap.* 206. *Form of warrant of execution*, 117. Judgment, where *plene administravit* is pleaded, 118. *Ap.* 206, 207; judgment *quando*, &c. how enforced, 119. Proceedings on a devastavit, 119. *Ap.* 207; *summons*, 119; *judgment*, 120; *warrant of execution*, 120.
Exemption from serving on juries, 74. *Ap.* 172.
Expenses, travelling, allowed to judges, 8. *Ap.* 162; allowed to clerk, 11. *Ap.* 162.
Expenses of witnesses, payment or tender to, on summoning them, 45. *Ap.* 176; what expenses allowed on taxation, 46, 83. *Ap.* 176.
Expiration of tenancy, proceedings to recover tenement on, 125, 127. *Ap.* 188.
Extinguishment of debt recovered, imprisonment for fraud not to operate as, 114. *Ap.* 181.
Extortion of officers, remedy for, 16. *Ap.* 186.

F.

Fair, actions in which the title to, shall be in question, not within the jurisdiction of the new county courts, 3. *Ap.* 169; where the title to a fair comes in question in replevin, plaint may be removed from the new county court to the superior court, 123.
False colour or pretence of the process of the court, pretending to act under, felony, 29. *Ap.* 168.
False evidence, perjury, 44. *Ap.* 175.
False imprisonment, *summons* in action for, 27; evidence, 70; defence, 70.
False pretences, obtaining credit under, commitment, 107. *Ap.* 179.

False representationof the credit of another, *summons* in action for, 28.
Fees, to be paid to the judge, 8. *Ap.* 199, by the treasurer, 18. *Ap.* 162; to the clerk, 11. *Ap.* 199; to the high bailiff, 13. *Ap.* 208. Treasurer, clerk, bailiff, or other officer, exacting other fees than those allowed, penalty, 16. *Ap.* 186.
Fees to barristers and attornies, what allowed, 17. *Ap.* 177.
Fees on distress for rent, 100. *Ap.* 183.
Fees collected for the general fund, 18. *Ap.* 165.
Fees on matters in equity transacted by the court, 6.
Fees, to be received, and an account kept, by the clerk, 10. *Ap.* 155; to be paid previously to the proceeding had, 11. *Ap.* 159; how as to fees on executions, 11. *Ap.* 159. Table of fees to be hung up, 11. *Ap.* 159.
Fees, residue of, after payment of salaries, to go to the general fund, 11, 19. *Ap.* 159.
Felony, in forging the process of the court, or delivering papers falsely purporting to be a copy of a summons, &c., or professing to act under false colour or pretence of process, 29. *Ap.* 168.
Fiat in bankruptcy, how proved, 38; execution to be levied before issuing of, 94; what the effect of its being afterwards annulled, 95.
Fieri facias, 87. See "*Execution.*"
Fine, how proved, 38.
Fine for contempt, 9. *Ap.* 185; for extortion, or other misconduct of officers, 16. *Ap.* 186; fine for disobedience of summons by a witness, 45. *Ap.* 176, *and form of the order for the fine*, 45.
Fines, payment of, enforced by order of the judge, 45. *Ap.* 176; to be received, and an account kept, by the clerk, 10, 18. *Ap.* 155; entries thereof to be made in the books, 114. *Ap.* 184; when paid or levied, to be paid over to the general fund, 19. *Ap.* 192.
Fixtures, whether seizable under an execution, 92.
Fixtures, *summons* in an action upon the sale of, 26.
Forfeitures, when paid and levied, to go to the general fund, 19. *Ap.* 192.
Foreign courts, proceedings in, how proved, 38.
Forging the seal or process of the court, or serving or enforcing it, knowing it to be forged, felony, 29. *Ap.* 168.
Forms, made by five of the judges of the superior courts, 2. *Ap.* 173.
Form, want of, no order, verdict, judgment, &c., to be quashed or vacated for, *Ap.* 192.
Franchise, actions in which the title to, comes in question, not within the jurisdiction of the new county courts, 3. *Ap.* 169; and where the title to a franchise comes in question in replevin, plaint may be removed, 123. *Ap.* 187.

Fraud, commitment for, 104; in what cases, 106, 107. *Ap.* 179; summons, 104. *Ap.* 179, *and the form of it*, 104; how served, 105. *Ap.* 179, 207; appearance and examination, 105. *Ap.* 179; not appearing, commitment, 105. *Ap.* 179, *and order for it*, 106; summons of witnesses, 105. *Ap.* 179; in what cases commitment, 106. *Ap.* 179, *and order for it*, 107; the like, at the trial, 108. *Ap.* 180, *and order for it*, 108. Warrant of commitment, 109. *Ap.* 180; *form of it after judgment*, 110, *or upon examination at the trial*, 111; *the like for not appearing*, 109; how executed, 109. *Ap.* 180, 181; how executed out of the district, 112. *Ap.* 181, 208; gaoler to receive and detain the party, 112. *Ap.* 181; no protection or certificate of bankrupt or insolvent court, to prevent the imprisonment, 112. *Ap.* 181. Costs, 113. *Ap.* 179. Warrant, when and how returned, 113. *Ap.* 209. On payment of debt, &c., defendant discharged, 113. *Ap.* 184; *form of certificate of payment*, 113. Imprisonment not to be a satisfaction of the debt, 114. *Ap.* 181, and the party may be again imprisoned for further fraud, 114. *Ap.* 181. Also the judge may rescind or alter his original order, 114. *Ap.* 180.

Fraudulent assignment of goods, to defeat an execution, where of no effect, 97.

Fraudulent preference, where it invalidates an execution against a bankrupt, 95, 96.

Fund, general, 18: what fees collected for it, 18. *Ap.* 165; all penalties, forfeitures and fines to go to it, 19. *Ap.* 192; suitors' money unclaimed, to go to it, 19. *Ap.* 184; residue of fees, after payment of salaries, to go to it, 11, 14, 19. *Ap.* 159. Clerk to keep an account of it, and pay the money over to the treasurer, 19. *Ap.* 165. Fund, how applied, 19. *Ap.* 165, 166.

Furniture, *summons* in action for the hire of, 26; *summons* in trespass for breaking and injuring it, 27.

G.

Gaol, to which a party examined for fraud may be committed, 106, 107. *Ap.* 180.

Gaols, belonging to courts in schedules A. and B., in what cases they may be used, *Ap.* 164.

General fund, 18: what fees collected for it, 18. *Ap.* 165; all penalties, forfeitures and fines, to go to it, 19. *Ap.* 192; suitors' money unclaimed, to go to it, 19. *Ap.* 184; residue of fees after payment of salaries, to go to it, 11, 14, 19. *Ap.* 159. Clerk to keep an account of it, and pay the money over to the treasurer, 19. *Ap.* 165. Fund, how applied, 19. *Ap.* 165, 166.

Gift of goods, &c., to defraud creditors, commitment for, 107. *Ap.* 179.
Goods bargained and sold, *summons* in action for, 26; evidence, 62; defence, 62.
Goods, carriage of, *summons* in action for, 26; evidence, 61; defence, 62.
Goods sold and delivered, *summons* in action for, 26.
Goods, replevin for taking, *summons* in action of, 28.
Goods, trespass for taking, &c., *summons* in action of, 27.
Goods, what, may be taken under an execution, 91. *Ap.* 178; whose goods, 93. *Ap.* 178; goods may be taken, after commitment for fraud, 114. *Ap.* 181.
Good Friday, summons not to be served on, 31. *Ap.* 209; warrant to deliver possession, not to be executed on, 131. *Ap.* 188.
Grounds of claim, to be stated by claimant, under interpleader summons, 103. *Ap.* 208; *form of them*, 103.
Guardians of the poor, judge (if an attorney) not to be clerk to, 7. *Ap.* 149.

H.

Hearing in court, in ordinary cases, 7. *Ap.* 168; before whom, 72. *Ap.* 171; how, 74. *Ap.* 172. Hearing, in replevin, 124. *Ap.* 206. Hearing, in actions to recover tenements after expiration of tenancy, 127. *Ap.* 188.
Hereditaments, corporeal or incorporeal, actions to try the title of, not within the jurisdiction of the new county courts, 3. *Ap.* 168, 169; but landlord may recover corporeal hereditaments from tenant, after expiration of tenancy, 3, 125. *Ap.* 188.
High bailiff, 12: his appointment, 12. *Ap.* 156; high bailiff of Westminster, and high bailiff of Southwark, 12. *Ap.* 156; high bailiffs of courts in schedules A. and B., *Ap.* 157. Clerk or treasurer cannot be, 12. *Ap.* 155. Duties of high bailiff, 12. *Ap.* 157, 155, 156, 208, 209; he cannot act as attorney for a party in court, 12, 16. *Ap.* 156; must return a list of summonses served, 31. *Ap.* 209; must cause writs of execution to be executed, 87. *Ap.* 178; shall hold cheques, bills, &c. seized, 91; must appoint brokers and appraisers to value and sell the goods seized, 98. *Ap.* 182; rent to be levied by distress, 98. *Ap.* 183; high bailiff to return warrant, 100. *Ap.* 209, and pay the money into court, &c., 100. *Ap.* 209. Execution by him, out of the district, 100. *Ap.* 181; warrant returned and money paid over, 101. *Ap.* 181, 209. Execution by him of warrant of commitment, 109. *Ap.* 180; the like, out of the district, 112. *Ap.* 181, 208; and return thereto, 113. *Ap.* 209.

High bailiff, his fees on distresses for rent, 100. *Ap.* 183.
High bailiffs of courts in schedules A. and B., provision as to, *Ap.* 157.
Hire of horse, or furniture, &c., *summons* in actions for, 26.
Hire, goods lent on, cannot be taken under an execution against the hirer, 93.
Holding, proof of, in action for recovery of tenement, 127. *Ap.* 188.
Horse, hire of, *summons* in action for, 26.
Horsemeat and stabling, *summons* in action for, 26.
House, action to recover, after expiration of tenancy, 3, 125. *Ap.* 188.
House, entering, to levy under an execution, 91; the like, as to the house of a third party, 91.
House of correction, commitment to, for fraud, 106, 107. *Ap.* 179.
House of Lords, proceedings in, how proved, 38.
Husband, under execution against, goods vested in trustees for the wife, &c. cannot be taken, 97.

I.

Idiot cannot be a witness, 42.
Illness of judge, deputy to be appointed, 8. *Ap.* 153; the like, as to the clerk, 10. *Ap.* 155.
Impeaching the credit of a witness. how, 52.
Implements of trade, to a certain amount, cannot be taken in execution, 90, 91. *Ap.* 178.
Imprisonment, false, *summons* in action for, 27; evidence, 70; defence, 70.
Imprisonment for fraud, not a satisfaction of the debt, 114. *Ap.* 181.
Inability, judge may be removed for, 7. *Ap.* 152.
Inability of defendant to pay, from sickness, &c., judge may stay the judgment, 86. *Ap.* 182.
Inaccurate description of person or place, shall not vitiate a plaint, 22. *Ap.* 169.
Incompetency of witnesses, 42; from want of discretion, 42; from want of religion, 43; but not from infamy or interest, 43.
Incorporeal hereditaments, actions concerning title to, not within jurisdiction of new county courts, 3. *Ap.* 169.
Increase of districts, if thought necessary, 2. *Ap.* 146.
Indemnity to judge, officers, &c., by whom warrant of possession issued, &c., 132. *Ap.* 189.
Indorser of bill, *summons* in actions against, 25; evidence, 59; defence, 60.
Indorser of promissory note, *summons* in action against, 25; evidence, 60; defence, 60.

Indorsement on summons, after service, in what cases, 32. *Ap.* 208.
Indorsement on warrant of execution, of debt, costs, and costs of execution, 87. *Ap.* 184.
Infancy does not render a witness incompetent, 43.
Infancy, defence of, 34: notice to be given, 34. *Ap.* 173, and when, 34. *Ap.* 205; *form of the notice*, 34, 35.
Infant may sue for wages or piece work, &c., 4. *Ap.* 170; may be a witness, 43.
Informality, in warrant of possession, &c., action for, 132. *Ap.* 189.
Information for penalties, need not be in writing, 135. *Ap.* 192.
Insolvent, discharge as, defence of, 34; notice to be given, 34. *Ap.* 173; when, 34. *Ap.* 205; *forms of the notice*, 34, 35.
Insolvent, goods of, when not seizable under an execution, 96.
Insolvent debtors' court, proceedings in, how proved, 38; no protection from, shall prevent commitment for fraud, 112. *Ap.* 180.
Instalments, judgment for debt, &c. payable by, 78. *Ap.* 177; *form of order accordingly*, 80; instalments, how payable, 80. *Ap.* 206. Order for costs by instalments, 82, 83. *Ap.* 177. Execution how, where money is payable by instalments, 86, 87. *Ap.* 178.
Instruments in writing, not under seal, how proved, 39.
Insulting judge, juror, clerk or officer, penalty, 9. *Ap.* 185.
Interest, *summons* in action for, 26; evidence, 64.
Interest, in the event of a suit, in what cases it does not render a witness incompetent, 43.
Interpleader, 101: in what cases, 101. *Ap.* 187; summons, 101. *Ap.* 187, *and form of it to plaintiff*, 102, *to claimant*, 102; summons, how served, 103; delivery of particulars of claim, 103. *Ap.* 208, *and form thereof*, 103; adjudication, 103. *Ap.* 187, *and form of order*, 103.
Intestacy, action for distributive share under, within the jurisdiction of the new county courts, 3, 4. *Ap.* 170.
Intestate, judgment in action by or against, administrator may sue or be sued upon, 116. *Ap.* 206.
Inventory of goods taken under an execution, when to be made, 91.
Irregularity in warrant of possession, &c., action for, 132. *Ap.* 189; in proceedings for penalties, not to render distress unlawful, 136. *Ap.* 193.
Issue, no formal joinder of, necessary, 74. *Ap.* 173.

J.

Joinder, formal, of issue, not necessary, 74. *Ap.* 173.
Joint demand against two, one may be sued on, 4, 28, 37. *Ap.* 171.
Judge, 6: his appointment, 6. *Ap.* 148; his appointment upon a vacancy, 7. *Ap.* 152; may be removed from one district to another, 7. *Ap.* 152; or altogether for inability or misbehaviour, 7. *Ap.* 152. His duties, 7. *Ap.* 168, 171, 153; salary, 8. *Ap.* 159, 161; deputy, 8. *Ap.* 153. In what cases he may punish for contempt, 9. *Ap.* 185.
Judges of the courts in Bath, Bristol, Liverpool, and Manchester, to remain, 7. *Ap.* 149.
Judge's fees, what, *Ap.* 199; when and by whom to be paid to him, 18. *Ap.* 162.
Judge, hearing before, 7, 72. *Ap.* 171.
Judge, before whom a summons for fraud is heard, may rescind or alter any order he previously made, 114. *Ap.* 180.
Judge to appoint the clerk, 9. *Ap.* 153; in what cases he may appoint a deputy, 10. *Ap.* 155; to appoint the high bailiff or remove him, 12. *Ap.* 156.
Judge, insulting, fine or commitment, 9. *Ap.* 185.
Judge, no action against, for issuing warrant of possession, 132. *Ap.* 189.
Judges of the superior courts to make rules and forms for the county courts, 2. *Ap.* 173.
Judge's order, how proved, 38.
Judgment, 78:—order thereon, 79; *form of order upon a judgment for plaintiff*, 79, *the like where there is an apportionment of costs*, 79; the order may be payable by instalments, 78. *Ap.* 177; *form of it*, 80; instalments where payable, 80; judgments for defendant, 80; *form of order thereon*, 81, *the like where there is an apportionment of costs*, 81. Judgment final, but judge may grant a new trial, 81. *Ap.* 176.
Judgment, consent to, upon terms, 74; *form of it*, 75.
Judgment for costs, in what cases, 75, 80. *Ap.* 176, 174, 177; *form of it*, 81.
Judgments, to be registered by clerk, 10. *Ap.* 155; how to be entered in his book, 114. *Ap.* 184.
Judgments, in what cases set aside, 83. *Ap.* 174; *form of the order for that purpose*, 84; *bond to be given*, 84.
Judgment not to be delayed or reversed by writ of error, 87. *Ap.* 183.
Judgments, cross, execution in case of, 82, 87. *Ap.* 185.
Judgment by default, execution upon, in case of bankruptcy, 95.
Judgment in actions by or against executors or administrators, same as in the superior courts, 116. *Ap.* 170; judgment

for plaintiff, against executor, &c., 117. *Ap.* 207; *warrant of execution thereon*, 117; judgment, where the defence is, that the defendant is not executor, or is founded on some matter arising since the death, 118. *Ap.* 207; judgment where *plene administravit* is pleaded, 118. *Ap.* 206, 207; judgment on assets *quando*, &c., 114, 115. *Ap.* 206, 207; judgment on a devastavit, 119. *Ap.* 207, *and form of it*, 120, *and form of execution thereon*, 120.

Judgment of assets *quando acciderint*, 118. *Ap.* 206, 207; how enforced, 119. *Ap.* 207.

Judgment by or against a testator or intestate, no execution on, but executor may sue or be sued on it, 116. *Ap.* 206.

Judgment in replevin, for plaintiff, 124. *Ap.* 206, *and form of it*, 124; for defendant, 124. *Ap.* 206, *and form of it*, 125.

Judgment in action to recover tenement, on determination of lease, &c., 129; *form of it*, 129.

Judgment in trespass for suing out warrant of possession, shall supersede the warrant, 133, *Ap.* 190.

Judgments, how proved, 38; of the house of lords, how proved, 38.

Jurisdiction of the ancient county court, what now remains of it, 1.

Jurisdiction of the new county courts, 2. *Ap.* 168; and demands must not be split, for the purpose of bringing several actions, 3. *Ap.* 169. In what district action to be brought, 4. *Ap.* 169.

Jurisdiction, concurrent, of other courts with the new county courts, 5. *Ap.* 190.

Jury, in what cases, 72. *Ap.* 171; party requiring, must give notice to the clerk, and the clerk shall send notice to the opposite party, 72. *Ap.* 171, *form of the former notice*, 73, *of the latter notice*, 73; party must also make deposit, 73. *Ap.* 171. Five jurors to be empanelled, and verdict to be unanimous, 73. *Ap.* 172. Challenge, 73. *Ap.* 172. Jurors to be summoned, 73. *Ap.* 172: *form of the summons*, 74; not attending, penalty, 74. *Ap.* 172.

Juror, insulting, punishment, 9. *Ap.* 185.

Justice of the peace, if a judge be, he need not have qualification by estate, 8. *Ap.* 153.

Justices, clerk to, judge (if an attorney) not to act as, 7. *Ap.* 149.

Justicies, writ of, in the ancient county court, 1. *Ap.* 146.

L.

Lancaster, chancellor of the duchy of, in what cases he shall appoint the judges for districts within the duchy, 7. *Ap.*

152, or remove them, 7. *Ap.* 152, or appoint their deputies, 8. *Ap.* 153.
Lancaster, court of common pleas at, has concurrent jurisdiction with the new county courts, 6.
Land, action for recovery of, by landlord against tenant, on determination of tenancy, 3, 125. *See "Landlord."*
Land, trespass to, *summons* in action for, 27; evidence, 68; defence, 69.
Lands clauses consolidation Act, applied to purchases under this Act, 6. *Ap.* 164.
Landlord, remedy of, for rent, where the tenant's goods are taken under an execution from the new county courts, 98. *Ap.* 183. *Form of his claim*, 99. If his claim be disputed, it may be decided on an interpleader summons, 100, 101. *Ap.* 187.
Landlord, remedy of, against his tenant, where the latter holds over, 125: in what cases, 125. *Ap.* 188; plaint and summons, 126. *Ap.* 188, *and form of the summons*, 126; in what court, 126, 127; proceedings thereon, 127. *Ap.* 188; evidence, 127; *judgment*, 129; warrant to deliver possession, 129. *Ap.* 188, *form of it*, 130, and execution of it, 131; warrant in what cases stayed, 133. *Ap.* 189, 190; landlord, how liable in cases of irregularity or informality, 132. *Ap.* 189.
Leading questions, not to be asked in the examination of a witness, 48; but they may in cross-examination, 52.
Leave to sue in a district in which the defendant does not reside, in what cases necessary, 4, 28; *form of it*, 28.
Legacy, action for, within the jurisdiction of the new county courts, 4. *Ap.* 170.
Levy, under an execution, 90; meaning of the word "levy," in the case of execution against bankrupts, 95.
Liability of high bailiff, same as sheriff within his bailiwick, 13. *Ap.* 157.
Liability of defendant, how incurred, examinable upon summons, 107. *Ap.* 179; if incurred under false pretences, or without having a reasonable expectation to discharge it, commitment, 107. *Ap.* 179.
Liability of plaintiff, in an action for suing out warrant of possession, if he had no right of possession, 132. *Ap.* 189, 190.
Libel, action for, not within the jurisdiction of the county courts, 3. *Ap.* 169.
Lien, goods on which a party has a lien, when seizable in execution, when not, 93.
Limitation under a will, action to try the validity of, not within the jurisdiction of the court, 3. *Ap.* 169.
Limitation of action against officers of the court, 15. *Ap.* 193.
Limitation, statute of, how set up as a defence, and notice

thereof, 34. *Ap.* 173; when notice to be given, 34. *Ap.* 205, *and form thereof*, 34, 35.
Limitation of time, within which warrant of execution to be executed, 90. *Ap.* 207.
List of jurors, to be given to clerk, 74. *Ap.* 172.
List of summonses to be stuck up, 31. *Ap.* 209.
Liverpool, judge of the court in, 7. *Ap.* 149; may practise in chambers as conveyancer, 8. *Ap.* 152.
Local courts, establishment of, and their jurisdiction, 1.
Lodging, *summons* in action for, 26; in action for use and occupation of, 26; evidence, 65; defence, 66.
Lord chancellor to appoint the judges, 6. *Ap.* 148, and their deputies, in what cases, 8. *Ap.* 153.
Lord warden of the stannaries, court of, not affected by this Act, 6. *Ap.* 194.
Lords, house of, proceedings in, how proved, 38.
Lunatic cannot be a witness, unless during a lucid interval, 43.

M.

Magistrates, clerks to, judge (if an attorney) not to be, 7. *Ap.* 149.
Maker of a promissory note, *summons* in an action against, 25; evidence, 59, 60; defence, 60.
Malicious prosecution, action for, not within the jurisdiction of the new county courts, 3. *Ap.* 169.
Manchester, judge of the court at, 7. *Ap.* 149; by whom to be appointed hereafter, 7. *Ap.* 152; not to practise as barrister within his district, except in chambers as conveyancing counsel, 8. *Ap.* 152.
Manors of Sheffield, Ecclesall, &c., provisions as to the courts of, 7. *Ap.* 149, 151.
Marine, in barracks, summons how served on, 30. *Ap.* 204.
Market, actions in which the title to, is in question, not within the jurisdiction of the new county courts, 3. *Ap.* 169; and where such title is in question in replevin, plaint removeable, 123. *Ap.* 187.
Marriage, action for breach of promise of, not within the jurisdiction of the new county courts, 3. *Ap.* 169.
Marriage, register of, how proved, 38.
Marriage settlement, goods conveyed to trustees by, when not seizable under an execution against the husband, 97.
Means of defendant to discharge debt, inquiry into upon summons, 107. *Ap.* 179, or at the trial, 108. *Ap.* 180; if he have the means, and refuse to pay, commitment, 107. *Ap.* 179.
Meat, drink, washing and lodging, *summons* in action for, 26.
Medicines, *summons* in action for, 26.

Memory, witness may refresh, how and in what cases, 49.
Middlesex, judge of the court of, 7. *Ap.* 150; by whom to be appointed hereafter, 7. *Ap.* 152; not to practise as barrister within his district, except in chambers as conveyancing counsel, 8. *Ap.* 152.
Mines, persons working in, how served with summons, 30. *Ap.* 204.
Misbehaviour, removal of judge for, 7. *Ap.* 152; of clerk for, 9. *Ap.* 154; of high bailiff for, 12. *Ap.* 156.
Misbehaviour in court, how punished, 9. *Ap.* 185.
Misconduct of officers of the court, punishment for, 15. *Ap.* 186; remedy for damage arising from, 16. *Ap.* 186.
Misnomer in plaint, when not material, 22, 28. *Ap.* 169.
Money, authority to borrow, to defray the expenses of the courts, &c., 2. *Ap.* 165.
Money may be taken under a warrant of execution, 90, 91, 92. *Ap.* 178.
Money levied or received by bailiff, to be paid into court, 13, 100. *Ap.* 209; in what cases retained, upon notice, 100. *Ap.* 206; when to be paid over to the high bailiff of another district, 101. *Ap.* 181, 209.
Money lent, *summons* in action for, 26; evidence, 63.
Money paid, *summons* in action for, 26; evidence, 63.
Money received by defendant for plaintiff, *summons* in action for, 26; evidence, 63.
Money, payment of, into court, in what cases, 35. *Ap.* 175; when to be paid in, 35. *Ap.* 205; *notice* thereof, 36; acceptance and notice, 36. *Ap.* 205, *and form of the notice*, 36; proceeding after it, 37. *Ap.* 175; costs, 37. *Ap.* 175, 205.
Money paid into or out of court, clerk to keep an account of, 10. *Ap.* 155.
Money paid into court, in actions against officers, 15. *Ap.* 193.
Money, securities for, may be taken under a warrant of execution, 91. *Ap.* 178; who may sue upon them, 91. *Ap.* 179.
Money of suitors, unclaimed, when to go to the general fund, 19. *Ap.* 184.
Mortgage, bill of sale of goods, by way of, in what cases they cannot be taken under an execution against the mortgagor, 96.

N.

Neglect of bailiff, in levying an execution, remedy for, 13. *Ap.* 186.
Neglect to pay debt recovered, where defendant has the means to do so, commitment, 107. *Ap.* 180.
Neglect of witness to attend in pursuance of summons, penalty for, 45. *Ap.* 176.

Negligence, *summons* in actions on the case for, 27.
New trial, in what cases, 83, 76, 82. *Ap.* 176, 174; *form of notice of application for it*, 84; *order for it*, 84; *bond given thereon, form of it*, 84; when it may be put in suit, *Ap.* 190.
Nonjoinder, not available as a defence, 37.
Nonsuit, in what cases, 80, 81. *Ap.* 176, 174; costs, 82; bond on setting aside, *form of it*, 84, when it may be put in suit, *Ap.* 190.
Note given by clerk to the plaintiff, upon entering a plaint, 22. *Ap.* 203; *form of it*, 22.
Note, promissory, *summons* in action on, against maker, 25; against indorser, 25.
Notice of act of bankruptcy, its effect upon a levy under a warrant of execution, 94, 95.
Notice of action against officers, 15. *Ap.* 193.
Notice of application for new trial, or to set aside proceedings, when and to whom to be given, 83. *Ap.* 205; *form of it*, 84.
Notice of application to set aside execution or order, money paid into court under it to be retained, 100. *Ap.* 206.
Notice of defence, in what cases, 32, 34. *Ap.* 173; *form of it*, 34, 35; clerk to give notice thereof to plaintiff, 33. *Ap.* 173; *form of the latter notice*, 35.
Notice of demand of a jury how and when given to clerk, and by the clerk to the other party, 72. *Ap.* 171, 205; *form of the former notice*, 73, *and of the latter notice*, 73.
Notice of money paid into court, to be given by clerk to the plaintiff, 35. *Ap.* 175; *form of it*, 36; notice of acceptance of it, by and to whom given, and how served, 36. *Ap.* 205; *form of the latter notice*, 36.
Notice to produce, in what cases, 40; *form of it*, 41; how proved, &c, 41.
Notice to produce books, effect of, 41.
Notice, service of, 30. *Ap.* 205.
Notice of set-off, when to be given, 32. *Ap.* 205; clerk to give notice thereof to plaintiff, 32. *Ap.* 205; *forms of both notices*, 33.
Notice indorsed on summons, 24.
Notice of the time of holding the court, how to be given, 7. *Ap.* 168.
Nuisance, *summons* in an action on the case for, 27.
Number, what, on plaint, 22. *Ap.* 169.

O.

Oath of jurors, 73. *Ap.* 172; when and by whom administered, 73. *Ap.* 172.
Oath or affirmation of witnesses, 44. *Ap.* 175.

Oath of party, upon examination before committal, 105. *Ap.* 179; oath of witnesses, 105. *Ap.* 179.
Obtaining credit on false pretences, or by fraud or breach of trust, commitment, 107. *Ap.* 179.
Offices, for the business of the courts, by whom to be provided, 6. *Ap.* 164, 166.
Office of clerk, 10. *Ap.* 208; office hours, 10. *Ap.* 208.
Office copy, in what cases evidence, 39.
Officers of the court, 9: clerk, 9; high bailiff, 12; treasurer, 14. How protected, 9, 15. *Ap.* 185; actions against them, 15. 132. *Ap.* 193, 189; how punished for misconduct, 15. *Ap.* 186; not to act as attornies in the court, 16. *Ap.* 156.
Opinion, evidence in matters of science, 49.
Orders of the court, generally, to be registered by the clerk, 10. *Ap.* 155; by whom to be served, 12. *Ap.* 157; how served, 29, 30. *Ap.* 205; to be entered in the court book, 114. *Ap.* 184.
Order, *form of*, for adjournment of hearing, 78.
Order of bankrupt or insolvent court, not to prevent warrant of commitment from being executed, 112. *Ap.* 181.
Order of commitment, upon summons, 107. *Ap.* 179, or at the trial, 108. *Ap.* 180. Warrant thereon, 109. *Ap.* 180, *and form of it*, 109, 110, 111; how executed within the district, 109. *Ap.* 180, or out of the district, 112. *Ap.* 181, 208.
Order for costs to defendant where the plaintiff does not appear, 75. *Ap.* 174; *form of it*, 75.
Order for costs, where plaintiff does not recover more than the money paid into court, 37. *Ap.* 175.
Order, *form of*, for fine on witness for not attending, &c., 45; how served, 45.
Order on interpleader summons, 101. *Ap.* 187; *form of it*, 102.
Order of a judge, how proved, 38.
Order for a new trial, 83. *Ap.* 174, 176; *form of it*, 84; notice of applying for it, when and to whom given, and how served, 84. *Ap.* 205; *form of it*, 84, *and of the bond to be given*, 84.
Order for payment of sum adjudged, 78; *form of it for plaintiff*, 78; *the like where there is an apportionment of costs*, 79; it may be to pay by instalments, 78. *Ap.* 177, *and form of it*, 80; order for defendant, 80. *Ap.* 176, 174, *and form of it*, 81, *and the like where there is an apportionment of costs*, 81. Order to be final, unless in case of a nonsuit, or where the judge grants a new trial, 81. *Ap.* 176; in what cases he may rescind or alter it, 114. *Ap.* 180.
Order to stay or set aside proceedings, 83. *Ap.* 174, 176; *form of it*, 84, 85; notice of applying for it, when and

to whom given, and how served, 83. *Ap.* 205; *form of it*, 84. Order to suspend or stay the judgment, in case of illness, &c. of defendant, 86. *Ap.* 182; *form of it*, 86.
Order, *form of*, to set aside judgment, 76. *Ap.* 206.
Order, money paid into court under, when to be retained, 100.
Oxford, university of, Act not to affect the rights and privileges of the chancellor or vice-chancellor of, 4. *Ap.* 193.

P.

Palace court, not affected by this Act, 6.
Palatine, counties, courts of, in what cases they have concurrent jurisdiction with the new county courts, 6.
Parliament, proceedings in, how proved, 38.
Particulars of demand to be given to clerk, when plaint entered, 22. *Ap.* 203; *form of them*, 22; one to be annexed to the summons when served, 29. *Ap.* 204; evidence cannot be received of anything out of them, 55. Particulars in in replevin, 122. *Ap.* 206; *form of them*, 122.
Particulars of set-off, to be given to clerk, and forwarded to plaintiff, 32. *Ap.* 205; *form of them*, 33; evidence cannot be given of any set-off out of them, 55.
Particulars of claim, under interpleader summons, 103. *Ap.* 208; *form of them*, 103.
Parties to action, may be witnesses, 44.
Partner of clerk, not to be treasurer or high bailiff, 10. *Ap.* 155; not to act as attorney in the court, 10. *Ap.* 156.
Partner of high bailiff, not to be clerk or treasurer, 12. *Ap.* 155; not to act as attorney in the court, 12. *Ap.* 156.
Partner of treasurer, not to be clerk or high bailiff, 14. *Ap.* 155; not to act as attorney in the court, 14. *Ap.* 156.
Partners, how sued, 29, 37. *Ap.* 171; goods of, taken under an execution, 96.
Partnership account, action for balance of, within the jurisdiction of the new county courts, 3. *Ap.* 170.
Party to the action, may be examined on oath at the hearing, 44. *Ap.* 175.
Payment of money into court, in what cases, 35. *Ap.* 175; when to be paid in, 35. *Ap.* 205; *notice* thereof, 36; acceptance and notice, 36. *Ap.* 205; *and form of the notice*, 37, proceeding after it, 36. *Ap.* 175; costs, 37. *Ap.* 175, 205. Clerk to take charge of, and keep an account of, all money paid into court, 10. *Ap.* 155.
Payment into court of money adjudged to be paid by instalments, &c., 80. *Ap.* 177.
Payment into court of money levied under an execution, 100, 101. *Ap.* 208, 209; when, to the high bailiff of another district, 101. *Ap.* 181, 209.

Payment of money into court, in actions against officers, 15. *Ap.* 193.
Payment of the money for which warrant of execution issues, to clerk or bailiff, execution to be superseded, 90. *Ap.* 183; in what cases money to be retained, 100. *Ap.* 206.
Payment of debt, by party committed, he shall be discharged, 113. *Ap.* 184; *form of the certificate of payment*, 113.
Payment of fees, how enforced, 11. *Ap.* 159.
Payment to witness of his expenses, when serving him with summons, 45. *Ap.* 176.
Payment by clerk, of money in his hands, to treasurer, 18. *Ap.* 162.
Peace, clerk of, judge (if attorney) not to be, 7. *Ap.* 149.
Peace officers, to act in aid of the execution of a warrant of commitment, 109, 113. *Ap.* 181, 182; or warrant of execution, 91, 101. *Ap.* 178; may take persons assaulting officers, or rescuing goods levied under an execution, 98. *Ap.* 185.
Penalties, proceedings for, under this Act, 135. *Ap.* 192, 193; when recovered, to be paid to the general fund, 19. *Ap.* 192.
Perjury, in giving false testimony, 44. *Ap.* 175.
Person, trespass to, *summons* in action of, 27; evidence, 69, 70; defence, 70.
Personal actions, what, within the jurisdiction of the new county courts, 2. *Ap.* 168; if commenced in old county court, how continued in the new courts, 4. *Ap.* 147.
Personal property, trespass to, *summons* in actions of, 27; evidence, 69; defence, 69.
Personal service of summons, 30. *Ap.* 204; how if service be not personal, and defendant do not appear, 30. *Ap.* 204.
Personal service of summons for examination for fraud, 105. *Ap.* 179.
Persons present in court, may be compelled to give evidence, 45. *Ap.* 176.
Plaint, in what cases, 21. *Ap.* 169; to be entered by clerk, 114. *Ap.* 184. Plaint in replevin, 122. *Ap.* 187, 206. Plaint in action to recover tenement, on expiration of term, 126. *Ap.* 188; in what district, 126, 127. *Ap.* 188.
Plaintiff, liability of, for suing out warrant of possession, 132. *Ap.* 188, 189.
Plaintiff's note on entering plaint, 22. *Ap.* 203; *form of it*, 22.
Pleas, court of, at Durham, in what cases it has concurrent jurisdiction with the new county courts, 6.
Plene administravit, plea of, judgment on, for the plaintiff, 118. *Ap.* 206; for the defendant, 118. *Ap.* 207.
Possession of tenement, action to recover, after expiration of the term &c., 125: in what cases, 125. *Ap.* 188; plaint, 126. *Ap.* 188; summons thereon, 126. *Ap.* 188; *form of it*, 126, and how served, 126. *Ap.* 189; proceedings

thereon, 127. *Ap.* 188; evidence, 127; judgment, 129; *and form of judgment*, 129; warrant to deliver possession, 129. *Ap.* 188, *form of it*, 130, and how executed, 131, not to be executed on a Sunday, Good Friday, or Christmas-day, 131. *Ap.* 188; warrant of possession, in what cases stayed on bond given, 133. *Ap.* 190; *form of the bond*, 133; who may sue on it, 133. *Ap.* 190. *Warrant of execution for costs*, 131. Indemnity to judge, officers, &c. 132. *Ap.* 189. Liability of plaintiff, 132. *Ap.* 188, 189.

Possession of goods assigned by bill of sale, vendor having, does not prevent them from being taken under an execution against him, 97.

Possession, how kept, of goods seized under an execution, 98. *Ap.* 182.

Posting summons upon the premises, in what cases good service, in action to recover possession of tenement, 126. *Ap.* 189.

Practice, rules of, framed by the judges for the new county courts, 2. *Ap.* 173, 203, &c.

Practice as a barrister, not by judge within his district, 8. *Ap.* 152.

Precepts, to be issued by clerk, 10. *Ap.* 155.

Preference, fraudulent, by bankrupt, judgment founded on, its effect on an execution, 95, 96.

Prison, to what, party examined for fraud to be committed, 107, 112. *Ap.* 180; in what cases the prisons of the courts in schedules A. and B. to be used. *Ap.* 164.

Private statute, how proved, 37.

Privilege, none allowed, to exempt defendant from the jurisdiction of the new county courts, 4. *Ap.* 170.

Process, not provided for by the forms, to be framed by the clerk, 10. *Ap.* 209.

Process, service of, how, 29, 30. *Ap.* 204.

Proceedings of the court, to be entered in the court book, 114. *Ap.* 184.

Proceedings to recover possession of tenements, from tenant holding over, 125; in what cases, 125. *Ap.* 188, and in what district, 126, 127; plaint, 126. *Ap.* 188; summons thereon, 126. *Ap.* 188, *form of it*, 126, and how served, 126. *Ap.* 189; proceedings thereon, 127. *Ap.* 188; evidence, 127; judgment, 129, *and form of it*, 129; warrant to deliver possession, 129. *Ap.* 188, *form of it*, 130, and how executed, 131, not to be executed on Sunday, Good Friday, and Christmas-day, 131. *Ap.* 188. Warrant of execution, in what cases stayed, on bond given, 133. *Ap.* 190; *form of the bond*, 133, and who may sue upon it, 133, *Ap.* 190.

Proceedings for penalties under this Act, 135: summons and conviction, 135. *Ap.* 192; *form of the conviction*, 135.

Ap. 192; distress thereon, 135. *Ap.* 191, 193; and in default of distress, commitment, 136. *Ap.* 191.
Produce, notice to, 40; in what cases, 40; *form of it*, 41; effect of it, 41; effect of notice to produce books, 41.
Production of books, papers, &c., summons to a witness for, 44. *Ap.* 175; penalty for not producing them, 45. *Ap.* 176.
Promise in assumpsit, 56.
Promise to marry, action for breach of, not within jurisdiction of the new county courts, 3. *Ap.* 169.
Promissory note, *summons* in action on, against the maker, 25; against the indorser, 25; evidence in action upon, 59, 60; note, how proved, 39.
Promissory notes may be taken under a warrant of execution, 90, 91. *Ap.* 178; who may sue upon them, 91. *Ap.* 179.
Proof of holding, in action to recover possession of tenement, 127. *Ap.* 188.
Proof of service of summons, 31, 32. *Ap.* 169; *affidavit of service*, 31; the like in action to recover possession of tenement, 129. *Ap.* 188.
Property, personal, *summons* in action of trespass for taking, 27; for injury to, 27.
Property, examination as to the disposal of, 107. *Ap.* 179; delivery or transfer of it, with intent to defraud creditors, commitment for, 107. *Ap.* 179.
Prosecution, indemnity of judge and officers from, in respect of issuing or executing warrant of possession, 132. *Ap.* 189.
Prosecution, malicious, action for, not within the jurisdiction of the new county courts, 3. *Ap.* 169.
Protection of court of bankruptcy or insolvency, not to prevent commitment for fraud, 112. *Ap.* 180.
Purchase of lands, &c. for courts, offices, &c. 2. *Ap.* 164, 165, 166.
Public company, or corporation, judge (if attorney) not to be clerk to, 7. *Ap.* 149.
Public statute, need not be proved, 37.
Punishment for contempt, 9. *Ap.* 185.

Q.

Qualification by estate as justice of the peace, not required by judge, 8. *Ap.* 153.
Questions, leading, not to be asked in the examination of a witness, 48; but they may, in cross-examination, 52.
Quit, refusal or neglect to quit tenement, on expiration of the term, action for, 125. *Ap.* 188, 189. *See "Landlord."*

R.

Recognizance for appearance, at the return of the distress warrant, in proceedings for penalties, 136. *Ap.* 191.
Record, superior courts of, in what cases they have concurrent jurisdiction with the new county courts, 5. *Ap.* 190; costs in actions where they have not, 5. *Ap.* 191.
Records in the Queen's courts, how proved, 38.
Records, in the new county courts, how kept, 114. *Ap.* 184.
Recordari facias loquelam, writ of, to remove plaint in replevin, 124.
Recovery, how proved, 38.
Recovery of tenement, action for, 3, 125: in what cases, 125. *Ap.* 188; plaint, 126. *Ap.* 188; summons thereon, 126. *Ap.* 188, *form of it*, 126, and how served, 126. *Ap.* 189; proceedings thereon, 127. *Ap.* 188; evidence, 127; judgment, 129, *and form of it*, 129; warrant of possession, 129. *Ap.* 188, *form of it*, 130, and how executed, 131. *Warrant of execution* for costs, 131. Indemnity to judge, officers, &c., for issuing and executing warrant, 132. *Ap.* 189. Liability of plaintiff, 132. *Ap.* 189, 188.
Re-examination of a witness, 54.
Reference to arbitration, 76. *Ap.* 173; *form of it*, 77; award to be entered as judgment in the cause, 77. *Ap.* 173; judge however may set it aside, 77. *Ap.* 173.
Refreshing memory of witness, how and in what cases, 49.
Refusal of witness to attend, &c., penalty, 45. *Ap.* 174; *form of order for the fine*, 45.
Refusal to be sworn, of party summoned for fraud, commitment, 106. *Ap.* 179; refusal to pay, where he has the means, commitment, 107. *Ap.* 179.
Refusal to quit tenement, after expiration of the term, action for, 125. See "*Recovery*," *supra*.
Register of baptism, marriage, or burial, how proved, 38.
Register of orders, judgments, &c. clerk to keep, 10. *Ap.* 155.
Registrars of the courts of Bristol, provisions as to, *Ap.* 158.
Relief to parties, in action on bond given on stay of warrant of possession, 133. *Ap.* 190, or given upon applying for new trial, &c. *Ap.* 190.
Religion, want of, where it renders a witness incompetent, 43.
Removal of cause, in what cases only, 115. *Ap.* 174; *form of bond to be given*, 115.
Removal of goods taken under an execution, 91.
Removal of judge, 7. *Ap.* 152; of clerk, 9. *Ap.* 153; of high bailiff and bailiffs, 12. *Ap.* 156.
Removal of plaint in replevin, 123. *Ap.* 187; by what writ, 124; *form of bond to be given*, 123.

Removal of property, with intent to defraud creditors, commitment, 107. *Ap.* 179.
Rent, action for use and occupation, to recover, 65 ; *summons*, 26 ; evidence, 65 ; defence, 66.
Rent, landlord's remedy for, in case of an execution, 98. *Ap.* 183 ; for what rent, 99. *Ap.* 183 ; *form of claim for it*, 99 ; fees, 100. *Ap.* 183.
Rent, claim for, under interpleader summons, 101. *Ap.* 187, 208. *See "Interpleader."*
Rent, distress for, replevin in case of, to be brought in new county courts, 122. *Ap.* 187.
Replevin, 122 : in what cases, 122. *Ap.* 187 ; plaint, and in what district, 122. *Ap.* 187, 206, particulars of the goods taken, 78. *Ap.* 206, *and form thereof*, 122. Removal of plaint, 123. *Ap.* 187, by what writ, 124, *and form of bond to be given*, 123. Summons, 25, *and the form of it*, 28. Trial, 124, *Ap.* 187 ; judgment, 124. *Ap.* 187, *form for plaintiff*, 124, *for defendant*, 125. How, where there is an execution, as well as a distress for rent, 98. *Ap.* 183.
Reply, witnesess in, 55.
Representation, false, of the credit of another, *summons* in action for, 28.
Rescinding orders, by judge, in what case, 114. *Ap.* 180.
Rescue of goods taken in execution, punishment, 15, 97. *Ap.* 185.
Residence, service of summons at place of, 30. *Ap.* 204.
Responsibility of high bailiff, for the acts of his bailiff, 13. *Ap.* 157, 185.
Retaining of money paid into court, in what cases, 100. *Ap.* 206.
Return by high bailiff, of what he has done under execution, 13, 100, 101. *Ap.* 208, 209, 181.
Return of summons, and list of those served, 31. *Ap.* 209.
Return of warrant of commitment, 113. *Ap.* 181, 209.
Returns, to be entered in the court book by the clerk, 114. *Ap.* 184.
Reversal of judgment, not, by writ of error, 115. *Ap.* 183.
Revocation of reference to arbitration, not without consent of the judge, 76. *Ap.* 173 ; judge may revoke it, with the consent of parties, 77. *Ap.* 173.
Rules of court, how proved, 38.
Rules of practice, made by the judges, 2. *Ap.* 173, 203.

S.

Salary, of judge, 8. *Ap.* 159, 161 ; of clerk, 11. *Ap.* 161 ; of high bailiff, 14. *Ap.* 161 ; of treasurer, 14. *Ap.* 154.

Sale of goods taken in execution, 98, 91. *Ap.* 182; by whom, 98. *Ap.* 182.
Sale of goods under distress for rent, 99. *Ap.* 156.
Sale, bill of, goods assigned by, when they may be taken in execution, when not, 96.
Sale, bill of, by sheriff under an execution, effect of, 97.
Satisfaction, entry of, in the case of cross-judgments, 82. *Ap.* 177.
Satisfaction of debt, imprisonment not to be, 114. *Ap.* 181.
Seal of the court to be stamped on all summonses, 29. *Ap.* 168; on particulars of demand, 29. *Ap.* 204; on particulars of set-off, 33. *Ap.* 205.
Seal of the court, forging, felony, 29. *Ap.* 168.
Secretary to board of guardians, vestry, &c., judge (if attorney) not to be, 7. *Ap.* 149.
Secondary evidence, in what cases allowed, 39.
Security to be found by the clerk, 11. *Ap.* 158; by the high bailiff, 14. *Ap.* 158; by the treasurer, 15. *Ap.* 158; by brokers and appraisers, 98. *Ap.* 182.
Securities for money, may be taken under a warrant of execution, 90, 91. *Ap.* 178; who may sue upon them, 91, *Ap.* 178.
Security for the appearance of party convicted, at the return of the distress warrant, 136. *Ap.* 191.
Seduction, action for, not within the jurisdiction of the new county courts, 3. *Ap.* 169.
Servant, *summons* in action for damage by his negligence in driving, 27.
Servant, infant may sue for wages as, in new county court, as if he were of age, 4. *Ap.* 170.
Service of notice to produce, when, 41.
Service of summonses and orders, to be by high bailiff or his bailiffs, 12. *Ap.* 157; how served, 29, 30. *Ap.* 204; how, where the defendant is a sailor on board ship, or a soldier or marine in barracks, 30. *Ap.* 204; how, where he is working in a mine, 30. *Ap.* 204; how, where he avoids service, 30. *Ap.* 204; when to be served, 30. *Ap.* 204; if not served personally, what proof required, 30. *Ap.* 204. Service, how proved, 31, 32. *Ap.* 170, *form of affidavit of service*, 31.
Service of summons on one of several persons jointly liable, 29, 37. *Ap.* 171.
Service of interpleader summons, how, 103.
Service of summons in action for recovery of tenements, how, 126. *Ap.* 189; proof of the service, when required, 129, *Ap.* 188.
Service of summons on defendant after judgment, for fraud, &c., how, 106, 107. *Ap.* 179.
Service of orders for debt, damages or costs, how, 79.

Service of summons on witness, by whom, 45. *Ap.* 175; how, 45. *Ap.* 176.
Service of order for fine, upon a witness for not attending, &c., 45.
Service of summons on jurors, how, 74. *Ap.* 172.
Service of notice of payment of money into court, 35. *Ap.* 205.
Set-off, notice to be given of it, to clerk, and by clerk to the plaintiff, 32. *Ap.* 173; *form of the former notice*, 33, *of the latter notice*, 33; particulars to be given, 32. *Ap.* 205, *and form of them*, 33; no evidence to be given of any set-off out of them, 55.
Setting aside award, 77. *Ap.* 173.
Setting aside execution, previous notice may be given to clerk to retain money levied or paid on account of it, 100. *Ap.* 206.
Setting aside judgment, 76. *Ap.* 174; *form of the order*, 76; setting aside judgment and granting a new trial, 83. *Ap.* 174; *form of the order*, 84. Notice of intended application must be given, 83; *form of it*, 84. Bond must also be given, 83, *form of it*, 84, and who may sue upon it. *Ap.* 190.
Settlement, limitation under, action to try its validity, not within the jurisdiction of the new county courts, 3. *Ap.* 169.
Sheffield, court of the manor of, who to be first judge, 7. *Ap.* 149, 151; not to act as barrister within his district, except in chambers as conveyancing counsel, 8. *Ap.* 152.
Sheriff, money in his hands, levied under an execution, cannot be taken in execution against the party for whom it was levied, 92.
Sheriff, bill of sale from, its effect upon an execution, in the case of bankruptcy, 97.
Ship, service of summons on a seaman on board, how, 30. *Ap.* 204.
Sickness, defendant unable to pay from, judge may suspend or stay the judgment, 86. *Ap.* 182.
Simple contract, debt on, 61; *summons*, 26; evidence, 61, &c. defence, 62, &c.
Slander, action for, not within the jurisdiction of the new county courts, 3. *Ap.* 169.
Small tenements, action for the recovery of, after determination of term, 125:—in what cases, 125. *Ap.* 188; plaint, 126, *Ap.* 188, in what district, 126, 127; summons, 126. *Ap.* 188, *form of it*, 126, and how served, 126. *Ap.* 189; proceedings thereon, 127. *Ap.* 188; evidence, 127; judgment, 129, *and form of it*, 129; warrant of possession, 129. *Ap.* 188, *form of it*, 130, and how executed, 131, not to be executed on Sunday, Good Friday, or Christmas-day, 131. *Ap.* 188. *Warrant of execution for costs*,

131. Indemnity to judge, officers, &c., 132. *Ap.* 189. Liability of plaintiff, for suing out warrant of possession, 132. *Ap.* 188, 189. Execution of warrant stayed, in what cases, and on what terms, 133. *Ap.* 189; bond given, when it may be sued upon, 133. *Ap.* 190; *form of the bond*, 133.

Soldier, service of summons upon, in barracks, 30. *Ap.* 205.

Southwark, provision as to the high bailiff of, 12. *Ap.* 156.

Special defences, in what cases of, notice thereof to be given to the clerk, 34, 32, and by him to the plaintiff, 32, 34, 35; *form of the former notice*, 34, *and of the latter notice*, 35.

Specialties, may be taken under a warrant of execution, 90, 91. *Ap.* 178; who may afterwards sue upon them, 91. *Ap.* 179.

Splitting actions, to bring them within the jurisdiction of the new county courts, not allowed, 3. *Ap.* 170.

Stabling and horsemeat, *summons* in action for, 26.

Stannaries of Cornwall, courts of, not affected by this Act, 6. *Ap.* 194.

Statements of particulars of demand, as many copies of, as there are defendants, and one in addition, to be given to the clerk, when the plaint is filed, 22. *Ap.* 203.

Statute of limitations, defence of, notice of it to be given to the clerk, and by the clerk to the plaintiff, 32. *Ap.* 173; when notice to be given, 34. *Ap.* 205; *form of the notice*, 34, 35.

Statute, private, how proved, 37; statute, public, need not be proved, 37.

Staying proceedings, in what cases, 83. *Ap.* 176, 188; *form of the order for the purpose*, 85. Judgment or execution not to be stayed or reversed by writ of error, 115. *Ap.* 183.

Staying the execution of a warrant of possession, in what cases, 133. *Ap.* 189; what bond to be given, and how conditioned, 133. *Ap.* 190; *form of it*, 133; and who may sue upon it, and in what cases, 133; *Ap.* 190.

Striking out cause, in what cases, 75. *Ap.* 174.

Successive summonses, in what cases issued, 30. *Ap.* 204.

Suitors' money, unclaimed, when to go to the general fund, 19. *Ap.* 184.

Sum for which action may be brought in the new county courts, 2, 3. *Ap.* 168.

Summary mode of hearing and determining the causes, 7, 74. *Ap.* 168, 172; the like in replevin, 124. *Ap.* 206.

Summons, upon plaint being entered, 23. *Ap.* 169; *form of it*, 23; *forms, in the different actions*, 25—28; how dated, 28, *Ap.* 204; to be sealed, 29. *Ap.* 168; in what district issued, 4, 28. *Ap.* 169; by whom issued, 10. *Ap.* 155; when to be served, 30. *Ap.* 204; by whom, 12, 29, 31. *Ap.* 157, 169; how to be served, 30. *Ap.* 204; how,

where defendant is serving on board ship, 30, *Ap.* 204, or residing as a soldier or marine in barracks, 30. *Ap.* 204, or working in a mine, 30. *Ap.* 204; or where he avoids service, 30. *Ap.* 204; particulars to be annexed to it when served, 29. *Ap.* 204; what proof required, when not served personally, 30. *Ap.* 204; not to be served on Sunday, Christmas-day, or Good Friday, 31. *Ap.* 209; service how proved, 31, 32, *Ap.* 169, *affidavit thereof*, 31. No evidence to be given of any cause of action out of it, 55. Forging it, or serving any pretended copy of it, felony, 29. *Ap.* 168.

Summons to an executor or administrator, on a devastavit, 119. *Ap.* 207; *form of it*, 119.

Summons for fraud, 104. *Ap.* 179; *form of it*, 104; how served, 105. *Ap.* 179; in what cases it may be repeated, 114. *Ap.* 181.

Summons to interplead, 101. *Ap.* 187; *form of it*, to plaintiff, 102, to claimant, 102; how served, 103. *Ap.* 208; particulars of claim to be given, 103, *form of them*, 103; order thereon, 103. *Ap.* 187, *and form of it*, 103; costs, 103. *Ap.* 187.

Summons to a juror, 74. *Ap.* 172; *form of it*, 74; how served, 74. *Ap.* 172.

Summons in an action to recover a tenement, after the expiration of the term, 126. *Ap.* 188; *form of it*, 126; how served, 126. *Ap.* 189; service when proved, 129.

Summons to a witness, 44. *Ap.* 175; *form of it*, 44; by whom served, 45. *Ap.* 175; how, 45; penalty for disobeying it, 45. *Ap.* 176; *form of the order for a fine*, 45.

Summonses, successive, to save the statute of limitations, 30. *Ap.* 204.

Summonses, entries of, in the court book, 114. *Ap.* 184.

Summonses, list of, to be made by high bailiff, 12, 31. *Ap.* 209.

Summons for a penalty, previous to conviction for an offence against this Act, 135. *Ap.* 192.

Sunday, summons not to be served on, 31. *Ap.* 209; notice, order or other process, not to be served on, *Ap.* 209; warrant of possession, not to be executed on, 131. *Ap.* 188.

Superior courts, concurrent jurisdiction of, with the new county courts, 5. *Ap.* 191.

Supersedeas of execution, upon payment, 90. *Ap.* 183.

Supersedeas, writ of error not, of judgment or execution, in the new county courts, 87, 115. *Ap.* 183.

Sureties, in replevin, 123. *Ap.* 187; *and form of the bond*, 123; on staying the execution of a warrant of possession, &c., 133. *Ap.* 189, *and form of the bond*, 133.

Surgeon, *summons* in action by, 26.

Suspending high bailiff, by whom, 12. *Ap.* 156.

Suspending judgment or execution, in what cases, 86. *Ap.* 182; *order for it*, 86.

T.

Table of fees to be put up in court house and clerk's office, 11. *Ap.* 159.
Taking goods, &c. *summons* in trespass for, 27; *summons* in replevin for, 28.
Taxation of costs, by the clerk, 83. *Ap.* 207.
Tender of amends, in action against officer, 15. *Ap.* 193.
Tender of expenses to witnesses, with summons, 45. *Ap.* 176.
Tender of debt to clerk, after execution, its effect, 90. *Ap.* 184.
Tenements, proceedings to recover possession of, 125:—in what cases, 125. *Ap.* 188; plaint, 126. *Ap.* 188, in what district, 126, 127; summons, 126. *Ap.* 188, *form of it*, 126, and how served, 126; proceedings thereon, 127. *Ap.* 188; evidence, 127; judgment, 129. *Ap.* 188, *and form of it*, 129; warrant to deliver possession, 129, *Ap.* 188, *and form of it*, 130, and how executed, 131. *Ap.* 188; *warrant of execution for costs*, 131. Indemnity to judge, officers, &c. with respect to warrant of possession, 132. *Ap.* 189. Liability of plaintiff, 132. *Ap.* 188. Warrant, in what cases stayed, 133. *Ap.* 189; bond thereupon, 133, *form of it*, 133, and in what cases put in suit, 133. *Ap.* 190.
Term, upon expiration of, action to recover the tenement, 125. See "*Tenement.*"
Testator, action by or against, no execution by or against executor, &c. on, but executor, &c. may sue or be sued upon it, 86, 116. *Ap.* 206.
Testator, goods of, cannot be taken under an execution against the executor, &c., 92, 93.
Time given to either party, 77. *Ap.* 175; *and form of the order for it*, 78.
Title to hereditaments, toll, fair, market or franchise, coming in question, action not within jurisdiction of new county court, 3. *Ap.* 169; where such title comes in question in replevin, plaint may be removed, 123. *Ap.* 187.
Title, derivative, of plaintiff, in action for the recovery of tenement, when to be proved, 128. *Ap.* 188.
Toll, action in which the title to, comes in question, not within the jurisdiction of the new county courts, 3. *Ap.* 169; if in replevin, plaint removable, 123. *Ap.* 187.
Tools of trade, when not seizable under an execution, 90, 91. *Ap.* 178.
Town clerk, judge (if attorney) shall not be, 7. *Ap.* 149.

Town-hall, in what case treasurer may contract for use of, for court, 2. *Ap.* 164, 166.
Trade, tools or implements of, when not seizable under an execution, 90, 91. *Ap.* 178.
Transfer of property, with intent to defraud creditors, commitment for, 107. *Ap.* 179.
Travelling expenses, allowed to judge, 8. *Ap.* 162; to clerk, 11. *Ap.* 162; to witnesses, 45.
Treasurer, 14: his appointment, 14. *Ap.* 154; salary, 14. *Ap.* 154; security, 15. *Ap.* 158; exaction by, how punishable, 16. *Ap.* 186; not to act as attorney in the court, 16. *Ap.* 156; to provide court houses, offices, &c., 2. *Ap.* 164. High bailiff or clerk, not to act as, 10, 12. *Ap.* 155. When and to whom, treasurer to account, 18. *Ap.* 163; where he shall audit the accounts of the clerk, 18. *Ap.* 162.
Trespass to land, *summons* in action for, 25, 27.
Trespass to personal property, *summons* in action for, 25, 27.
Trespass to the person, *summons* in action for, 25, 27.
Trespass, by suing out warrant of possession, 132. *Ap.* 189; not where the proceeding is merely irregular or informal, 122, 123, *Ap.* 189.
Trespasser, not by irregularity in distress upon a conviction for a penalty, 136. *Ap.* 193.
Trial, in ordinary cases, 72; in replevin, 124. *Ap.* 206.
Trial, new, in what cases, 83, 82, 76. *Ap.* 174, 176; *form of the notice of application for it*, 84, *and of the order*, 84; bond on granting it, 83, *Ap.* 190, *and form of it*, 84.
Trover, *summons* in action for, 25, 28; evidence, 71, 72; defence, 72.
Trust, credit obtained by breach of, commitment for, 107. *Ap.* 179.
Trustees, parochial board of, judge (if attorney) not to be clerk or secretary to, 7. *Ap.* 149.
Trustee for debtor, money in the hands of, cannot be taken under a warrant of execution, 92.

U.

Unanimous, verdict must be, 73. *Ap.* 172.
Unclaimed money of suitors, when to go to the general fund, 19. *Ap.* 184.
Underground, service of summons, &c. on persons working, how, 30. *Ap.* 204.
Universities of Oxford and Cambridge, courts of, not affected by this Act, 4. *Ap.* 193.
Unskilfulness, injury from, *summons* in action for, 27.
Use and occupation, *summons* in action for, 26; evidence, 65; defence, 65.

V.

Vacancy of office of judge, who to appoint, 7. *Ap.* 152.
Valuing goods taken in execution, by whom, 98. *Ap.* 182.
Venue, in actions against officers of the court, 15. *Ap.* 193.
Verdict, to be unanimous, 73. *Ap.* 172.
Verdict in action for suing out warrant of possession, in what cases it shall supersede the warrant, 133. *Ap.* 190.
Vestry, clerk or secretary to, judge (if attorney) not to be, 7. *Ap.* 149.
Vice-chancellor of University, courts of, not affected by this Act, 4. *Ap.* 193.
Voire dire, examination of witness upon, 46.

W.

Wages, infant may sue for, in new county court, as if he were of age, 4. *Ap.* 170.
Warrant of commitment for fraud, &c. in what cases, 106, 107. *Ap.* 179; summons, 104. *Ap.* 179, *form of it*, 104, when served, 105. *Ap.* 179, and how served, 105. *Ap.* 179; appearance and examination, 105. *Ap.* 179; examination of witnesses, 105. *Ap.* 179; not appearing, commitment, 105. *Ap.* 179, *and form of the order*, 106, *and warrant*, 109; in what cases committed upon summons, 106. *Ap.* 179, *and form of the order*, 107, *and warrant*, 110; in what cases at the trial, 108. *Ap.* 180, *and form of the order*, 108, *and warrant*, 111; how sued out and executed, 109. *Ap.* 180; how executed out of the district, 112. *Ap.* 181, 208; costs, 113. *Ap.* 181; return, 113. *Ap.* 209; on payment of debt, defendant discharged, 113. *Ap.* 184, *and form of certificate of payment*, 113. Imprisonment not a satisfaction of the debt, &c. 114. *Ap.* 181. Judge may rescind or alter his original judgment, 114. *Ap.* 180.
Warrant of commitment for contempt, 9. *Ap.* 185.
Warrant of execution, in what cases, 85. *Ap.* 178; for what amount, 87. *Ap.* 178, 177; when and how issued, 87. *Ap.* 178; how indorsed, 87. *Ap.* 184; *form of the warrant at the suit of plaintiff*, 88, *at the suit of defendant*, 89; within what time to be executed, 90. *Ap.* 207; how executed, 90; how executed out of the district, 100. *Ap.* 181; what goods may be taken, 91. *Ap.* 178; fixtures, 92; whose goods, 93; goods of bankrupt, 94, of insolvent, 96, of partners, 96; goods assigned by bill of sale, 96. Rescue of goods taken, 97. Goods how sold, 98. Rent deducted, 98. Warrant returned and money paid over, 100, 101. *Ap.* 209.

Warrant of execution against an executor or administrator, 116, *and form of it*, 117; the like upon a devastavit, 119, *and form of it*, 120.
Warrant of execution, for costs, *form of*, in action for recovery of tenements, 131.
Warrant of possession, in action for recovery of tenements, 129. *Ap.* 188; *form of it*, 130; how executed, 131; in what cases a trespass, and the subject of an action, 132. *Ap.* 189; in what cases and on what terms stayed, 133. *Ap.* 189, 190, *and form of the bond*, 133.
Warrant of distress, on a conviction for penalty, 135. *Ap.* 191.
Warrants, by whom issued, 10. *Ap.* 155; by whom executed, 12. *Ap.* 157.
Wearing apparel, when not seizable in execution, 90, 91. *Ap.* 178; wearing apparel of the wife, when seizable under an execution against husband, 97.
Westminster, high bailiff of, provisions respecting, 12. *Ap.* 156.
Wife, property settled on, when not seizable under execution against the husband, 97; when it is, 97.
Wife, a witness for or against her husband, 44. *Ap.* 175.
Wills of lands, how proved, 39; of personal property, how proved, 39.
Will, suit respecting the validity of, not within the jurisdiction of the new county court, 3. *Ap.* 169.
Witness, attendance of, 44;—summons, 44. *Ap.* 175, *and form of it*, 44, and how served, 45; fine for disobeying it, 45. *Ap.* 176, *and form of the order for the fine*, 45.
Witness, 42; incompetency of, for want of discretion, 42, or want of religion, 43; but not from infamy or interest, 43.
Witness, examination and cross-examination of, 46: examination of, upon the *voire dire*, 46; examination in chief, 47; cross-examination, 51; re-examination, 54; witnesses in reply, 55.
Witnesses, credit of, how impeached, 52—54.
Witnesses, when ordered out of court, 51.
Witnesses, allowance to, 46,; what to be allowed on taxation, 83.
Witnesses, examination of, on a summons for fraud, 105. *Ap.* 179.
Work and labour, *summons* in action for, 26; evidence, 62; defence, 62; the like, in action by an attorney, *summons*, 26; evidence, 65, defence, 65.
Writ, how proved, 38.
Writ of error, no supersedeas of execution, 87, 115. *Ap.* 183; and does not lie to reverse a judgment in the new county courts, 87, 115. *Ap.* 183.
Writ, what, to remove plaint in replevin, 124.
Written instruments, not under seal, how proved, 39.

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